Supreme Court, U.S.
FILED
971358 FEB 17 1998
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No. _____

In The

Supreme Court of the United States

October Term, 1997

FARNAZ HADJI-ELIAS, ASHRAF HADJI-ELIAS,

Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

Respondent.

On Petition For Writ Of Certiorari To The California Supreme Court And The Court Of Appeal, Second District

PETITION FOR A WRIT OF CERTIORARI

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CONSTITUTIONAL QUESTIONS PRESENTED

1. Whether the denial of a new trial based upon an erroneous Court of Appeal Opinion that is inconsistent with the law and that caused the erroneous and premature filing of a consent to a remittitur, in the wrong court, is contrary to federal law as a denial of constitutional due process as guaranteed by the XIVth Amendment?

2. Whether the erroneous and premature filing of a consent to a remittitur, in the wrong court, renders that erroneous and premature consent void and of no force or effect; disallows the judgment; and entitled Petitioners to a new trial?

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PETITION FOR A WRIT OF CERTIORARI

FARNAZ HADJI-ELIAS and ASHRAF HADJI-ELIAS (hereinafter sometimes jointly referred to as "petitioners") hereby respectfully petition for issuance of a writ of certiorari to review the decision and judgment of the Supreme Court of the State of California in the case of *Farnaz Hadji-Elias et al. vs. Superior Court of Los Angeles County,* California Supreme Court case number S 065104.

OPINIONS BELOW

The decisions of the California Court of Appeal and the California Supreme Court are unreported.

JURISDICTION

The decision of the California Supreme Court was issued on November 19, 1997. The jurisdiction of this Court rests on 28 U.S.C. § 1251.

CONSTITUTIONAL, STATUTORY AND OTHER PROVISIONS INVOLVED

The following statutory provisions are set out in the Appendix (Pet. App., at page 130, infra.):

U.S. Constitution, Amend XIV

28 U.S.C. § 1251

California Rules of Court, Rule 24(a)

California Rules of Court, Rule 24(c)

California Rules of Court, Rule 25(a)

STATEMENT OF THE CASE

This is a case which involves an issue of maintaining the lower courts to be consistent with the law which is of significant public interest and importance. The public's confidence in the courts is predicated on the integrity of the judicial system and the fact that this system is based on rules of law. In order to maintain that confidence, the courts must adhere to the rules of procedure established by and four the courts. This case is an example of what happens when courts make multiple mistakes and do not follow rules protected by the California and the United States Constitutions. The Court of Appeal Opinion is erroneous on many issues including the consent to the remittitur that was contrary to *California Rules of Court, Rule 24(a) and (c).* The Opinion was a misapplication of the two rules, the combination of which, does not exist in law. These errors render the consent void and the judgment disallowed, which necessitates a new trial to be granted. The Opinion includes other errors, each of which mandates a new trial.

Real Parties in Interest, Hassan Shahbaz and Guity Shahbaz (hereinafter sometimes jointly referred to as the "Real Parties"), frivolously sued Petitioners, mother and daughter, in a civil case in the Los Angeles Superior Court (hereinafter sometimes referred to as the "trial court"), case number WEC 142 752 (hereinafter sometimes referred to as the "case"), in what can only be characterized as a trivial dispute between two individuals

at the end of a personal relationship. The trial resulted in a runaway judgment against Petitioners which was the result of both passion and prejudice.

Thereafter, Petitioners appealed to the Second District of the California Court of Appeal, 2d Civil No. B 087 315 (hereinafter sometimes referred to as the "appeal"). In the decision on the appeal, the California Court of Appeal reversed the majority of the awards against the Petitioners. Even the Opinion of the Court of Appeal found that the judgment was the product of passion and prejudice and that the awards were erroneous. The Opinion of the Court of Appeal erroneously stated, contrary to *Rule 24(a)(c)*, that the Real Parties shall *"within 30 days of the date of the **remittitur**, file with the clerk of **this** court, and serve on appellants, a written consent . . . "* It should have stated that the consent was to be filed in the ***trial court*** after the filing of the ***remittitur***. Petitioners then sought a Rehearing of the Opinion of the California Court of Appeal. The consent is defective, which disallows the judgment to have been entered instead of a new trial.

While the Petitioners' Petition for Rehearing was still pending in the California Court of Appeal, the Real Parties erroneously and prematurely filed a consent to the remittitur on January 3, 1997 in the Court of Appeal, which was the wrong court. They failed to ever file a consent in *the trial court, at any time*. Ironically, on the same day Real Parties' attorney concurrently filed an answer to Petitioners' Petition for Rehearing. Thereafter, on January 6, 1997, the California Court of Appeal denied the Petitioners' Petition for Rehearing. Additionally, the Opinion of the Court of Appeal was erroneous because it was inconsistent with the transcript of the trial and it

confused factual events and ignored statutes of limitation [Petitioners will not discuss these issues at this juncture].

The main issue in this case is that the **Opinion of the Court of Appeal is erroneous and inconsistent with the law which mandates that a new trial be granted to Petitioners.** The remittitur was subsequently issued and filed on February 13, 1997. No *consent to that remittitur was ever filed within the 30 days after February 13, 1997.* The 30 days that Real Parties had to file the consent expired on March 15, 1997.

On April 22, 1997, although the consent to the remittitur was an invalid consent, the trial court erroneously rejected Petitioners' repeated objections to the erroneous and premature consent to the remittitur, and then modified its judgment and denied the Petitioners a new trial. The trial judge was aware that the consent had defects. However, because she did not have the file, she could not refer to the actual documents. At that hearing, even though the trial judge explicitly agreed with Petitioners' attorney that Petitioners were entitled to a new trial *if* the consent was invalid, however, later the trial court denied Petitioners the right to a new trial. (See Transcript in Appendix page 71.) The trial judge precluded Petitioners' attorney from further participation in the case. (See Transcript in Appendix page 93.) Since that hearing, Petitioners have been deprived of counsel in this case until this Petition. On May 14, 1997, knowing that the consent is defective, the trial court entered a disallowed modified judgment against Petitioners. *No notice of entry of that judgment was ever served on the Petitioners or filed with any court.* Since the Real Parties did not subsequently file the consent and since the premature consent was ineffective,

the trial court failed to comply with the provisions of the law when it did not order a new trial. This, denied Petitioners constitutional due process, guaranteed under the XIVth Amendment.

Petitioners then sought review of the ruling regarding the inconsistent Opinion of the Court of Appeal regarding the erroneous and premature filing of the consent. On October 8, 1997, the California Court of Appeal, Second Appellate District, denied Petitioners' Petition for a Writ of Mandate. On October 16, 1997, Petitioners filed a Petition for Review with the California Supreme Court regarding that erroneous Opinion of the Court of Appeal. On November 19, 1997, the California Supreme Court denied Petitioners' Petition for Review, California Supreme Court case number S 065 104.

REASONS FOR GRANTING THE WRIT

I.

THIS COURT SHOULD GRANT THIS PETITION FOR CERTIORARI TO EXERCISE ITS SUPERVISORY POWERS TO ENSURE THAT THERE WILL NOT BE UNCONSTITUTIONAL AND INCONSISTENT APPLICATIONS OF FEDERAL LAW IN THE STATE COURTS.

In order to avoid contradictory and unjust results, inconsistent applications of the law, and unconstitutional deprivations of due process, the lower courts must have guidance in making their decisions. (See *Colby v. J.C. Penney Co., Inc.*, 811 F.2d 1119, 1123 (7th Cir. 1987)). This case provides an opportunity for this Court to reaffirm the application of procedural due process to state court

proceedings. This Court can make it clear that state court procedure must be fundamentally fair and comply with the due process requirements of the XIVth Amendment.

The Court of Appeal Opinion is erroneous and inconsistent with the law. In this case, the trial judge ignored the fact that the consent to the remittitur was defective and therefore void. The judgment should never have been entered by the trial court. Instead, a new trial should have been granted. The patent contradiction between the Court of Appeal Opinion and *Rule 24(a)(c)*, annuls the consent and dictates a new trial. At the very least, the trial judge should have apprised the Petitioners of the statutory or decisional basis for her decision. Further, the unsubstantiated rejection of the case by the reviewing courts is the functional equivalent of no review at all. These repeated unconstitutional errors far departed from the accepted usual course of judicial proceedings.

Therefore, this Court should exercise its supervisory powers and grant this Petition for Certiorari and order that the Petitioners be granted a new trial.

II.

THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE ANY CONFLICTS OR QUESTIONS REGARDING THE ADMINISTRATION OF JUSTICE AND THE APPLICATION OF FEDERAL DUE PROCESS IN STATE COURTS.

A. THE DENIAL OF A NEW TRIAL BASED UPON THE ERRONEOUS AND PREMATURE CONSENT TO THE REMITTITUR WAS UNCONSTITUTIONAL AND DENIED THE PETITIONERS CONSTITUTIONAL DUE PROCESS.

The *United States Constitution, Amendment XIV,* provides, in pertinent part, that no State shall:

> " . . . deprive any person of life, liberty, or ***property*** without due process of law . . . " [Emphasis added.]

It is the purpose of the Fourteenth Amendment to preserve these rights against arbitrary deprivation by the States. (See *Vitek v. Jones,* 445 U.S. 480, 488-89, 100 S.Ct. 1254, 1261, 63 L.Ed.2d 552 (1980).) The right to procedural due process applies to the deprivation of a legitimate property interest. (*DeSalle v. Wright,* (C.A.7 (Ill.) 1992), 969 F.2d 273.) A judgment for exemplary damages qualifies as a property interest subject to constitutional protection. (*Kirk v. Denver Pub. Co.,* (Colo. 1991), 818 P.2d 262.)

The question of due process is a question of federal, rather than state, law. (*Waste Conversion, Inc. v. Sims,* 868 F.Supp 643, 651 (1994).) A showing that resorts to available procedures would be futile can establish a due process violation. (*Maples v. Martin,* 858 F.2d 1546, 1551 (11th Cir. 1988).) Further, if a state court misconstrues state law,

that can constitute a due process violation if the misconstruction clearly contradicts the established law of the state. (*Sun Oil Co. v. Wortman*, 108 S.Ct 2117, 2126 (1988).)

In (*Hicks v. Oklahoma*, 445 U.S. 343, 100 S.Ct. 2227, 65 L.Ed.2d 175 (1980), the Supreme Court held that the denial of what is a state procedural right can also be a denial of the federal right to due process. As the *Hicks* court noted at 100 S.Ct. 2229:

> "The defendant in such a case has a substantial and legitimate expectation that he will be deprived of his liberty to the extent determined by the jury in the exercise of its statutory discretion, cf. *Greenholtz v. Nebraska Penal Inmates*, 441 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979), and that liberty is one that the Fourteenth Amendment preserves against arbitrary deprivation by the State."

While the court in *Hicks* dealt with the deprivation of liberty in the context of a criminal prosecution, that rationale is equally compelling when applied to the deprivation of property in a civil action. There is no articulable reason why a civil litigant should not be entitled to at least this degree of protection from the deprivation of procedural due process. This is especially true when an unjust judgment will cause Petitioners to lose their only single-family residential property.

Therefore, since the Petitioners were denied procedural due process, the Petition should be granted and the Petitioners should be granted a new trial. In this case, the multiple errors committed by the trial court and the Court of Appeal, is the very abuse that the federal law was designed to prevent.

B. THE COURT OF APPEAL OPINION IS ERRONEOUS AND LEAD TO THE PREMATURE FILING OF A CONSENT TO THE REMITTITUR WHICH WAS VOID, BECAUSE THE COURT OF APPEAL ORDERED IT TO BE FILED IN THE COURT OF APPEAL, INSTEAD OF THE TRIAL COURT, BUT ONLY AFTER THE SUPERIOR COURT HAD REGAINED JURISDICTION OVER THE CASE.

In this case, yet another critical issue is when did jurisdiction revest in the trial court. This is a dispositive issue because a consent to the remittitur could not be filed until the Superior Court regained jurisdiction. Since the Court of Appeal Opinion is inconsistent with the law and the Real parties did not subsequently file the consent in the trial court and since the trial court failed to comply with the terms of *Rule 24(a)* and *Rule 24(c)*, the Petitioners are entitled to a new trial.

It is settled law in California that the lower court does not reacquire jurisdiction, until the filing of the remittitur in the reviewing court. *(California Rules of Court, Rule 25(a).)* As the court noted in *Bellows v. Aliquot Associates, Inc.* (1994) 25 Cal.App.4th 426 [30 Cal.Rptr.2d 723]:

> "When the remittitur issues, the jurisdiction of the appellate court terminates and the jurisdiction of the trial court reattaches."

The California Court of Appeal made its erroneous order clear in the decision. The consent to the remittitur was to be filed in the Court of Appeal "within 30 days from the date of the *remittitur.*" **The consent could not be filed earlier.** If the Court of Appeal wanted the consent to

be filed in the Court of Appeal, the Opinion should have stated that the consent was to be filed within 30 days from the date of the *decision*. As stated in *California Rules of Court, Rule 24(c)*:

> "If the reviewing court orders that a judgment be reversed and a new trial granted or that, in the alternative, the judgment be affirmed on condition that the party in whose favor judgment has been rendered consent to a remission of a portion thereof, or on condition that the party against who judgment has been rendered consent to an addition thereto, then, unless otherwise ordered, the judgment of reversal and ***granting of a new trial shall become final*** unless within 30 days after the filing of the ***decision*** two copies of a written consent by such party to the remission or addition shall be filed in the ***reviewing court***." [Emphasis added.]

In this case, the decision of the Court of Appeal erroneously ordered the filing of the consent to the reduction. The Court of Appeal Opinion wrongfully stated that the consent was to be filed within 30 days from the date of the ***remittitur***. Instead, it should have stated ***decision***. That Opinion also directed that the consent be filed with the clerk of the Court of Appeal which was contrary to *Rule 24(a)* and *(c)*. Clearly, this was erroneous as well. Either the consent should have been filed in the Court of Appeal within 30 days of the ***decision*** as per *Rule 24(c)* or it should have been filed within 30 days from the date of the ***remittitur***, in the trial court. It had to be one way or the other. Instead, the Court of Appeal improperly misapplied these two rules, which deprived the Petitioners

their guaranteed right to a new trial. **Based on the misleading provisions of the Opinion, the consent could not be properly filed in either the Court of Appeal or the trial court, at any time.**

Once the remittitur was filed, the trial court regained the jurisdiction to accept the consent and the real parties could only then, file the consent in the trial court, which they never did. Yet, the Court of Appeal ordered the consent to be filed in the Court of Appeal. This created a ***jurisdictional contradiction***. How could the consent be filed in the Court of Appeal once that court no longer had any jurisdiction? The answer is that it cannot. Once the judgment became final as to the Court of Appeal, that court no longer had the ability to modify the judgment. As stated in *California Rules of Court, Rule 24(a)*:

> "A decision of a Court of Appeal becomes final as to that court 30 days after filing. . . .
>
> When a decision of a reviewing court is final as to that court, it is not subject to modification . . . by that court . . . "

Since the Real Parties ***did not and could not*** both file the consent in the Court of Appeal and file it after the issuance of the remittitur, the consent was ineffective and the trial court's failure to grant a new trial, did not comply with the terms of the remittitur. This anomalous situation resulted in the consent being void. This denied Petitioners constitutional due process. **It is as if no consent had ever been filed and *Petitioners would unquestionably be entitled to a new trial.*** Consequently, Petitioners were entitled to a new trial in the trial court

and are now entitled to a new trial to be granted by this Court.

C. THE ERRONEOUS AND PREMATURE FILING OF THE CONSENT TO THE REMITTITUR, IN THE WRONG COURT, WAS PREJUDICIAL TO THE PETITIONERS BECAUSE IT INTERFERED WITH THE CONSIDERATION OF THEIR PETITION FOR REHEARING.

Further, the consent to the remittitur prejudiced the consideration of the Petitioners' Petition for Rehearing in the Court of Appeal. The Court of Appeal recognized the impropriety of that premature filing when it changed the filing date of the consent from January 3, 1997 to January 9, 1997. While the clerk apparently realized that the consent should not be filed before the Petition for Rehearing was decided, the clerk failed to recognize that the consent could not be filed in the Court of Appeal, and that it was also premature if it was filed before the filing of the remittitur.

The Court of Appeal realizing that the filing date of *January 3, 1997* was improper and premature, whited-out the number "3" of the actual "FILED" stamp and placed another stamp on the top right hand of the same page, ***"filed with permission January 9, 1997"***, signed by Justice Armstrong, which was after the determination of the Petition for Rehearing, which was denied on ***January 6, 1997***. Even the January 9, 1997 filing is improper and premature because that date is before the full and final determination of the full appellate process and the issuance of the remittitur of February 13, 1997.

In addition, there is a stamp on the top left hand of that page which reads as follows: ***"January 3, 1997"***. This

further proves that the number "3", was in fact a "3" which was whited-out by the Clerk of the Appellate Court, Ms. Terri Carter, who put her initials T.C. on the "**FILED**" stamp. As a result, this particular filed stamp does not show the day of filing. The number "3" could actually be seen by looking through, at the reverse side of the page. This information was reaffirmed to Petitioners by the clerk of the Appellate Court, 2nd Floor, on August 25, 1997. (See actual stamps printed on Appendix page 43.) This Document was received and was erroneously filed stamped on January 3, 1997 by the Appellate Court, however, it should **not** have been filed until **after the final determination of the issuance of the remittitur**. The Court of Appeal apparently realized that the consent should not be filed prior to the decision on the Petition for Rehearing. Otherwise, why did the clerk change the filing date? Clearly, it is because the premature filing of the consent denied Petitioners a full and fair appellate process. Additionally, it caused great prejudice to the Petitioners that the Court of Appeal allowed the consent to be filed prior to the decision on the Petition for Rehearing and prior to the final determination of the appellate process. Moreover, by filing the consent concurrently with the response to the Petition for Rehearing on January 3, 1997, the Real Parties undermined the appellate process. Petitioners were robbed of their rights to a fair and just due process of law. The Consent to the remittitur was premature, and greatly prejudiced Petitioners.

Therefore, since this is an additional defect of the consent, the Petitioners were denied due process and prejudiced by the premature filing of the consent. This Petition should be granted and the Petitioners should be granted a new trial.

D. A NEW TRIAL ON THE ISSUE OF PUNITIVE DAMAGES ONLY, WOULD BE IMPROPER AND UNCONSTITUTIONAL, BECAUSE A NEW TRIAL SHOULD BE GRANTED ON ALL ISSUES.

Another error of the Court of Appeal Opinion was to order a new trial on punitive damages only, while this was unconstitutional at the time this Opinion was issued. Because **the consent is void, a new trial should follow.** Then, consequently, when the Petitioners are entitled to a new trial on punitive damages, then Petitioners are entitled to a new trial on all issues. (*Rivera v. Sasson* (1995) 39 Cal.App.4th 1045, 1048 [46 Cal.Rptr.2d 144].) An award of punitive damages had to be rendered by the same jury that awarded compensatory damages in favor of the plaintiff and that found oppression, fraud, or malice. (*Civil Code Section 3295(b).)* Evidence of profit and financial condition were to be presented to the same trier of fact that found for the plaintiff and found one or more defendants guilty of malice, oppression or fraud. The issue is whether the authority of an Appellate Court to order a new trial on the issue of the amount of punitive damages only, survives. **The law clearly stated that the same jury that determines the first phase of the trial bifurcated as to punitive damages must decide the second phase**. (*Medo v. Superior Court* (1988) 205 Cal.App.3d 64, 68-69 [251 Cal.Rptr. 924] *Section 3295(d)* leaves no room expressly or tacitly otherwise. The issue could not have been tried to a new jury, once the jury which found liability had been excused. (*El Monte v. Superior Court* (1994) 29 Cal.App.4th 272, 276-277 [34 Cal.Rptr.2d 490.)

Consequently, a retrial on the issue of punitive damages ***only***, would be improper, unconstitutional, and violative of *Civil Code § 3295(d)*. When there is to be a retrial as to punitive damages, then there must also be a retrial on all issues. Since the Petitioners had a right to a new trial based on the law at that time, they are still entitled to that right.

Therefore, under express federal law, the Petitioners were denied procedural due process. This Petition should be granted and a new trial ordered.

CONCLUSION

In this case, the Petitioners were wrongfully denied their right to a new trial. In many respects, the Court of Appeal Opinion is erroneous and inconsistent with the law and misapplied the requirements for the filing of the consent, which render the consent void and disallowed any judgment to be entered, which in turn, mandates a new trial. Additionally, the Opinion regarding the consent is a jurisdictional impossibility, and therefore an error. Further, the trial court failed to properly apply the law to correct that defect, and instead, denied the Petitioners a guaranteed right to a new trial. That failure to recognize that jurisdictional infirmity resulted in a due process deprivation of constitutional dimension. The Petitioners have been entitled to a new trial at every level. They were entitled to a fair and complete process at the appellate level; the granting of a new trial from the Court of Appeal; and a new trial from the California Supreme Court. This is Petitioners' final remedy. This Court should

exercise its supervisory powers and correct these unconstitutional errors which caused legal inconsistencies, in order to ensure justice for the Petitioners and to secure uniformity in court decisions and applications of the law.

Therefore, for the foregoing reasons, this Court should grant a writ of certiorari and grant Petitioners a new trial. This is an issue of utmost legal and public importance that should be settled by this Court.

Respectfully submitted,

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DATED: February 16, 1998

No. _____

In The

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October Term, 1997

FARNAZ HADJI-ELIAS,
ASHRAF HADJI-ELIAS,

Petitioners,

vs.

THE SUPERIOR COURT OF
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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

HASSAN SHAHBAZ et al., Plaintiffs and Respondents, v. FARNAZ HADJI-ELIAS et al., Defendants and Appellants.	B087315 (Super Ct. No. WEC142752) (Filed Dec. 12, 1996)

APPEAL from a judgment of the Superior Court of Los Angeles County. Barbara Meiers, Judge. Affirmed in part and reversed in part.

Krane & Smith, Marc Smith, and Mark E. Goodfriend for Defendants and Appellants.

Law Firm of Harold Greenberg and Susan K. Pintar for Plaintiffs and Respondents.

Appellants Farnaz Hadji-Elias, Ashraf Hadji-Elias, Shahab Hadji-Elias, and Shahram Hadji-Elias appeal from a judgment against them after jury trial. At that trial, respondents Hassan Shahbaz and Guity Shahbaz Ellis were awarded both compensatory and punitive damages on their complaint against appellants, and appellants were awarded nothing on their cross-complaint against

respondents. Appellants allege numerous grounds of error. We affirm in part and reverse in part.

Procedural Summary

These claims arise out of a romantic relationship between Hassan[1] and Farnaz and the break-up of their relationship. Guity is Hassan's daughter. Ashraf is Farnaz's mother, and Shahab and Shahram are her brothers.

Hassan's and Guity's complaint against appellants brought causes of action for wrongful taking of personal property, intentional infliction of emotional distress, assault and battery, invasion of privacy, and trespass. Factually, Hassan and Guity alleged that Hassan was a teacher, writer, and the editor of a magazine called *Rahavard*. Beginning in 1984, Hassan and Farnaz had a "close on-going personal relationship." Beginning in 1988 and continuing until the time the complaint was filed in December of 1989, appellants harassed both Hassan and Guity. This conduct included harassing telephone calls, threats, and physical altercations. In September, 1989, appellants stole various items from Hassan's apartment.

Appellants cross-complained, bringing causes of action for assault and battery and for intentional infliction of emotional distress, and petitioning for division of property pursuant to the Family Law Act and "Marvin V. Marvin." Factually, appellants alleged that Farnaz and Hassan lived together as husband and wife from 1981, when Farnaz was seventeen years old and Hassan at least

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[1] In their briefs, both appellants and respondents refer to the parties by first name only. WE adopt that practice herein.

forty years older, until September of 1989. They acquired various items of personal property together and jointly published *Rahavard*. Beginning in February of 1986, Hassan and Guity became physically abusive to Farnaz, harassed her, and threatened violence.

Prior to trial, Hassan and Guity were refused leave to file a supplemental complaint containing factual allegations concerning acts of harassment which took place after the complaint was filed. However, as we discuss in greater detail later in this opinion, respondents were allowed to introduce evidence of those incidents, and to file a supplemental complaint at the close of evidence.

The jury completed a multi-question special verdict. On the cause of action for invasion of privacy, the jury found that, as to both Hassan and Guity, each appellant committed the tort, either acting individually or as part of a conspiracy, causing both Hassan and Guity to suffer "either economic or non-economic injury, damage, loss or harm."

On Hassan's claim for conversion, the jury found that each appellant, acting either individually or through the acts of co-conspirators, committed that tort, causing Hassan to suffer "injury, damage, loss or harm, either economic or non-economic." The jury found against Guity on a similar claim.

On the trespass claims, the jury found that each appellant except Shahram had trespassed on Hassan's and Guity's property, causing them both to suffer "injury, damage or harm."

On the intentional infliction of emotional distress claims, the jury found that as to both Hassan and Guity each appellant committed that tort, acting either individually or through the acts of co-conspirators, causing respondents to suffer "injury, damage, loss or harm, whether economic or non-economic."

On the assault and battery claims, the jury found that either individually or through the acts of co-conspirators, each appellant had committed an assault or battery on Hassan, and that he had suffered either economic or non-economic injury, damage, loss or harm as a result. The jury found against Guity on a similar claim.

The jury awarded $300,000 to Hassan and $12,800 to Guity against all appellants jointly and severally. The damage award was not allocated among the causes of action, but the jury did specify that $200,000 of Hassan's damages and $6,700 of Guity's damages were due to conduct prior to December 18, 1989, the date the complaint was filed. The remainder of the damages were due to conduct after that date.

The jury was also asked to find whether appellants acted with malice, oppression, or fraud. As to each appellant, the jury answered in the affirmative. As to Hassan, Farnaz was ordered to pay $330,000 in punitive damages, Ashraf was ordered to pay $190,000, and Shahab and Shahram were each ordered to pay $140,000. As to Guity, Farnaz was order [sic] to pay $15,200 in punitive damages, Ashraf was ordered to pay $8,800, and each of the other appellants was ordered to pay $8,000.

Appellants' motions for new trial and for judgment notwithstanding the verdict were denied. This appeal followed.

Factual Summary

We examine the evidence pursuant to the usual rules on appeal, in the light most favorable to the verdict. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870.) Because determination of the issues on appeal require a detailed appreciation of the facts, we present the evidence at trial in some detail. However, for the reasons set forth later in this opinion, we do not summarize all the evidence, but only evidence of the incidents which took place before December 18, 1989, the date the complaint was filed.

First, as a matter of background, Hassan and Guity fled Iran in 1979, when the Ayatollah Khomeni took power in that country. They settled in Washington D.C. and worked for he United States Information Agency. In Iran, Hassan was a well-known literary figure and was the director of Iranian National Radio and Television.

In 1981, Hassan moved to Los Angeles to found *Rahavard,* a Persian cultural journal. He earned money by giving speeches and papers at universities and meetings of organizations, and by teaching poetry at UCLA extension. He also taught a Monday night poetry class at his apartment. Farnaz attended the UCLA classes, and she and other members of her family, particularly her mother, attended the Monday classes. Farnaz and her family were also refugees from Khomeni.

Hassan's and Farnaz's romantic relationship began in late 1986 or early 1987. After several months, Farnaz became possessive and difficult. She would look at Hassan's engagement book and tell him that she did not want him to see certain people. She would attempt to dictate the food he ordered at restaurants. She often rang his doorbell at six in the morning, when he was asleep. Once, she rang his doorbell when he was writing an important speech. When he explained that he was too busy to talk, she screamed so loudly that the neighbors complained. In the fall of 1988, when Guity was due to arrive for a visit, Farnaz locked Hassan in his bedroom so that he could not go to the airport to pick her up. The jury also heard evidence that Farnaz taped Hassan's telephone calls.

In 1989, a female friend of Hassan's, Bahar, visited from Iran. Hassan had not seen her in fourteen years. Hassan was to meet Bahar at the home of mutual friends. Farnaz arrived at the house, hit Hassan's car, and acted like "a wild lioness." Later, she followed the party to a restaurant and told Hassan that if he kissed Bahar or took her in his arms, she would kill him. Hassan feared that she had a weapon.

Farnaz physically attacked Hassan by pushing him and by throwing candies, apples, and once a glass of wine at him. Once, when she was screaming at him, he felt that he was dying and called 911. The paramedic who responded gave him medicine. Then after a quarrel, Farnaz took, or pretended to take, 20 Ativan tablets which had been prescribed for Hassan. Hassan rushed her to the emergency room.

By 1989, Hassan felt that he was "at the brim" of a nervous breakdown. He began to express to Guity his distress over his relationship with Farnaz. He could not, however, simply end the relationship. Whenever he suggested to Farnaz that the relationship should end, "she started screaming and banging and shouting and kicking." Also 1989, Ashraf telephoned Guity and offered to get her a house in Los Angeles if she convinced Hassan to marry Farnaz.

In January of 1989, Dr. Farhang Holakouee began to provide psychological counseling to Farnaz. Hassan attended some of the sessions and Ashraf attended some. Holakouee's notes indicate that Farnaz was angry, jealous, and out of control. She wanted to control everything Hassan did. Hassan wanted to end the relationship, but Farnaz would not accept that fact. Even after the relationship ended, Farnaz would not accept that fact.

In August of 1989, Guity moved to Los Angeles to work at *Rahavard*. She wished to help her father, because she believed that he was physically sick and mentally exhausted. He looked like a haunted man. He didn't talk and could not do his work. Hassan's son also testified that in 1989, Hassan became withdrawn and stopped being the "jubilant person" he usually was.

At some point, Hassan called Ashraf and Shahab and told them that Farnaz was suicidal and needed a psychiatrist. Hassan, Ashraf, and Shahab met with Dr. Shamie, a psychiatrist recommended by Holakouee.

On or about September 20, 1989, at Shamie's recommendation, Hassan gave Shahab and Ashraf a letter to give to Farnaz, and left town for a few days. While he

was gone, he asked Guity to get some items from his apartment, including 80 to 100 articles and essays written by statesmen, politicians, and great men and women of letters.

When Guity went to the apartment the essays and articles were not there. There were empty places on the bookshelves, and cassette tapes were missing. Guity checked Hassan's post office box and the mailbox at his apartment. There was no mail at either place. Usually, there was mail relating to *Rahavard*, including checks from subscribers.

Hassan's apartment manager told Guity that while Hassan was out of town a man identifying himself as Mr. Shahbaz had called and asked her to let the maid in on Saturday. Lillian Valencia worked for Hassan as a maid. She testified that on or about September 23, 1989, Farnaz called her and asked her to clean Hassan's apartment. While Valencia was working, Farnaz and Ashraf arrived. Valencia helped them carry cassettes and magazines from the apartment to their car. They made three or four trips. When Valencia saw the car, it was already loaded with things from the apartment. Farnaz and Ashraf were at the apartment when Valencia left.

At about the same date, Guity received a telephone call from Ashraf telling her to lock her doors and turn off the lights. Ashraf said that Farnaz was very angry and that Guity and her father should be careful. Guity received numerous similar telephone calls from Ashraf and one of her sons during the nine or ten days Hassan was out of town. Guity sought advice from Shamie, who

told her that Farnaz "had borderline personality, she was capable of homicide and suicide or both."

In addition to the articles and essays, many other items were missing from Hassan's apartment. These included Bahar's letters; family photographs; copies of Hassan's diplomas, including a diploma from the University of Tehran which could not be replaced; 200 audiotapes of Hassan's speeches which were based on time-consuming research which could not be duplicated in part because Iranian resources were no longer available; 600 cassettes of private musical performances made while Hassan was director of National Iranian Radio; three albums of Hassan's correspondence with dignitaries and men and women of letters, many of whom had since died; two gold rings, one of which had belonged to Bahar; business and personal records; 80 copies of 22 books written by Hassan, including a Farsi translations of *Gone with the Wind, Rebecca,* and the works of T.S. Eliot, which were out of print or available only in Iran; the recently completed manuscript of a Farsi translation of the selected poems of Walt Whitman; and a box containing over three hundred Persian marriage certificates and four to five books of marriage records. The marriage certificates were to Hassan's possession because he retained them after officiating at weddings so that his signature could be notarized, and because couples he had married had neglected to pick them up. However, after 1989, when it became possible for those couples to return to Iran, the certificates were needed. Hassan had to re-write at least three hundred certificates.

Hassan made many attempts to get appellants to return his property, meeting with appellants and asking

various members of the Los Angeles Iranian community to assist him. In 1990, Farnaz returned copies of three of Hassan's speeches, after Hassan explained "these are my life, this – means to me my own being. It's my name, my work, my dignity, my income."

Respondents produced evidence of many other instances of harassment. We summarize.

Soon after the break-up, the Shahbaz and Hadji-Elias families met at Shamie's office to talk. Hassan was late and Farnaz was angry. She accused Guity of trying to keep Hassan away from her, and after the meeting pulled on Hassan to prevent him from getting into the elevator and leaving.

Late in the fall of 1989, Ashraf, Farnaz, and Shahab went to Guity's house and demanded to get in. Hassan was there. Guity talked to them through the window. They demanded to talk to Hassan and accused Guity of stealing Hassan from Farnaz. Hassan was visibly upset after this incident.

In December of 1989, Guity, Hassan, and Hassan's son went to a party at the home of friends named Amiri. Guity and Hassan encountered Farnaz, Ashraf, and Shahab outside the Amiris' front door. Farnaz tried to grab a box which Guity was holding. Farnaz and her family tried to prevent Guity and Hassan from entering the house. Shahab held Hassan's elbow. Ashraf pulled on the back of Guity's jacket and Farnaz pushed and shoved her. Farnaz said that she had a knife. Ashraf told Guity that if Guity hurt Farnaz, she would kill Guity's sons. Hassan was bent over, unable to breathe. Many people inside the Amiri apartment observed these events.

About ten days later, on December 10, Guity saw Farnaz, Ashraf, and Shahab standing on the sidewalk in front of her house. Guity, who had had a dinner party, was saying good-bye to her guests. Hassan and friends named Hedayati were among those present. Farnaz told Guity that she was not allowed to see the Hedayatis. She also said that she had a gun.[2]

As a result of these troubles, Hassan could not research, write, or work in the way he had. His income decreased. Word of these troubles spread throughout the Iranian community. As a result, he was not as frequently asked to perform the wedding and other ceremonies he had previously peformed. Previously booked weddings were canceled.

Guity suffered insomnia, stomach problems, nervousness, and muscle aches due to the stress of these incidents.

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[2] Evidence of incidents which took place after the complaint was filed included evidence of incidents of harassment; incidents in which Farnaz, or Ashraf and Farnaz, collided with Hassan's parked car; and threats by Farnaz against Hassan and Guity. For instance, in June of 1990, Farnaz followed Hassan on the freeway in heavy traffic for about an hour, repeatedly bumping into the rear of his car, exacerbating a cervical injury, so that Hassan could not sleep that night due to the pain. The president of the Iranian Association of America testified that prior to the Association's 1991 annual event, to be held in March of that year, Farnaz and Ashraf came to his office and demanded that Hassan's speaking engagement for the event be canceled. They threatened to create a disturbance, as they had at an previous event, forcing Hassan to cancel his appearance.

Discussion

1. The supplemental complaint

Throughout their brief, appellants argue that the court erred by allowing respondents to file their supplemental complaint after the close of evidence.[3] We agree.

The procedural history is as follows: The complaint in this action was filed on December 18, 1989. In April of 1991, respondents moved for leave to file a complaint which supplemented the causes of action for intentional infliction of emotional distress, assault and battery, and conspiracy with factual allegations regarding incidents of harassment which took place in 1990 and 1991. The motion was denied without prejudice to a motion to file an amended and supplemental complaint. Respondents made such a motion, were granted leave, and filed a new complaint which was substantially similar to the April supplemental complaint. Appellants demurred to the new complaint. The court ruled that the new complaint "concerns matters arising between the two warring sides since the suit began. The entire supplemental complaint is ordered stricken. The case will proceed on the basis of the complaint already on file."[4]

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[3] Appellants also state that the court erred in admitting evidence of acts which occurred after December 18, 1989, but make no arguments on the subject. We do not consider the contention. (*In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 278.)

[4] To be more precise, the order granting leave to amend ruled that a May 29 complaint was deemed filed. However, respondents filed another complaint after the ruling, on June 26, and it is to that complaint that appellants demurred. Neither the

In October of 1993, during pre-trial proceedings, respondents again moved to supplement the complaint and moved for an *in limine* ruling that evidence of appellants' acts after the complaint was filed with admissible. Appellants moved *in limine* to exclude evidence of the factual matters alleged in the stricken complaint. All motions were denied without prejudice.

The question of admission of this evidence came up again at trial, on oral motion of appellants to exclude the evidence. The court indicated that it had previously ruled that the complaint could not be supplemented, but that the evidence would be admitted since the continuing course of conduct was relevant to credibility.

Appellants again renewed their motion before respondents began to present evidence in the case. The trial court ruled that the evidence was admissible, but that " . . . I am happy to give [the jury] a limiting instruction either at the time that such evidence comes in or at the conclusion of the case, when I instruct the jury to say that the only actions for which damages can be recovered are those which are set forth in the complaint; however, they may consider all of the continuing conduct of the parties as it may relate to their believability as witnesses at trial."

At trial, respondents produced evidence of the incidents described in the earlier proposed supplemental complaints. At the close of evidence, respondents moved

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parties nor the court construed the ruling on the demurrer as leaving the May 29 complaint extant.

to file an amended and supplemental complaint according to proof, adding details to conform to proof regarding some of the incidents which took place before the original complaint was filed, and adding many incidents which took place afterward. This time, leave was granted. The trial court ruled that there was no surprise and thus no prejudice, since the matters in the complaint were well known to the parties (several of the incidents had been the subject of contempt proceedings on the restraining orders) and could have been the subject of discovery.

Code of Civil Procedure section 464 provides that a party "may be allowed, on motion, to make a supplemental complaint . . . alleging facts material to the case occurring after the former complaint or answer." A motion under this section is addressed to the discretion of the trial court, and the court's ruling will not be disturbed on appeal in the absence of a showing of abuse of that discretion. (*Wood v. Brown* (1974) 39 Cal.App.3d 232, 239-240.)

We find that the trial court abused its discretion here. It may be, as the court ruled, that appellants had the ability to take discovery regarding the post-December 18, 1989 incidents, and were not surprised by them. The point, however, is not determinative. The pre-trial ruling was that damages could not be recovered for any post-December 18, 1989 incident. Based on the ruling, appellants had no reason to cross-examine any witness or introduce any evidence concerning damages for those incidents.

The addition to the complaint of additional detail regarding pre-December 18 incidents is of no moment.

However, when after the close of evidence the court allowed allegations concerning post-filing events to become the basis for damage awards, appellants were substantially prejudiced. The ruling was thus an abuse of discretion.

The cases cited by respondents do not compel another result. *Honig v. Financial Corp. of America* (1992) 6 Cal.App.4th 960 is not on point. There, the trial court denied a motion to amend the supplement a complaint by adding facts which occurred after the initial complaint was filed. The motion was made a month before trial was scheduled. We held that the trial court abused its discretion by not allowing the amendment, and if necessary, postponing trial to allow time to undertake discovery and to prepare responses to the new allegations. Similarly, in *People v. Douglas* (1971) 15 Cal.App.3d 814, the motion for leave to file a supplemental complaint was made four months prior to trial. Here, in contrast, the supplemental complaint was filed at the close of evidence, when no additional discovery or preparation was possible, and allowed evidence which was admitted only for credibility to become the basis for relief.

Appellants argue that due to this error, the judgment must be reversed. We see no prejudice to the entire judgment, and thus do not reverse. (California Constitution, article 6, § 3.) However, there clearly is prejudice as to the award of damages for incidents which took place after December 18, 1989. The portion of the judgment which awards those damages is reversed.

2. The special verdict form

Appellants also argue that the special verdict form, which was drafted by the court, was improper and prejudicial, necessitating reversal of the judgment. We disagree.

The parties originally agreed that the jury would be presented with a general verdict. However, at the close of the case, appellants submitted lengthy proposed special verdicts on the complaint and cross-complaint which asked the jury to assess damages as to each party and each cause of action, and further allocated those damages between economic and non-economic damages. Contrary to appellants' argument here, the court did not reject those forms, but only informed counsel that the forms were "going in the right direction, but there were just too many of them." The court then prepared the special verdicts in the form in which they were given to the jury. Appellant had an opportunity to object, but did not do so. Any objection appellants had to the special verdicts was waived. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1138.)

3. The compensatory awards

Appellants challenge the factual basis for these awards, both on the ground that there were insufficient evidence of damages, and on the grounds that there is insufficient evidence that Ashraf, Shahab, and Shahram committed any tort.

Proof of Damages

As to proof of damages, appellants argue that evidence does not support the values counsel for respondents placed on many of the items of missing personal property during closing argument; that the evidence did not support a finding that it was as a result of Farnaz's conduct that Hassan stopped teaching at UCLA and thus lost that income; that respondents did not introduce medical bills to document their emotional distress, and other arguments.

We need not address any of these contentions in detail. First, the jury verdicts did not specify the amounts awarded for any particular item of property, or on any cause of action. Thus, even if appellants were correct regarding the deficiencies in evidence as to any given item or cause of action, the judgment would be affirmed. Moreover, damages in tort actions need not be precise, and uncertainty as to the amount of damage is not fatal to the recovery. (*Monroe v. Owens* (1946) 76 Cal.App.2d 23, 29-30; *Rovetti v. City and County of San Francisco* (1982) 131 Cal.App.3d 973, 980.) Presuming, as we must, in favor of the judgment (*Dubois v. Corroon & Black Corp.* (1993) 12 Cal.App.4th 1689, 1696) we find ample support for the pre-filing damage awards.

The jury was given a schedule, an attachment to the original complaint, listing some of the items taken from Hassan's apartment and the value he placed on each item. Hassan testified extensively regarding the value of missing items. The value of personal property may be established by the testimony of the owner. (*Schroeder v. Auto Driveaway Co.* (1974) 11 Cal.3d 908, 920.)

Many of the missing items were of obvious sentimental value. That value may be established by the owner, and the owner may be compensated for that value, even if the item in question has no market value whatsoever.[5] (Civil Code, § 335; *Willard v. Valley Gas & Fuel Co.* (1915) 171 Cal. 9, 15.) In such cases, damages for the emotional distress caused by the loss of the items may be recovered. (*Windeler v. Scheers Jewelers* (1970) 8 Cal.App.3d 844, 853.)

Further, both Guity and Hassan testified that they suffered emotional distress and physical symptoms as a result of appellants' behavior. Appellants have cited no authority for the proposition that such damages must be proved with medical evidence, and we know of none. To the contrary, tort damages for emotional distress may be recovered in the absence of physical injury. (*Thing v. La Chusa* (1989) 48 Cal.3d 644, 650.)

Appellants argue that respondents were precluded from recovering emotional distress damages because no statement of damages was served pursuant to Code of Civil Procedure section 425.11. As respondents argue, there is no showing that this objection was raised in the trial court. It is therefore waived. (*In re Marriage of Arceneaux, supra,* 51 Cal.3d at p. 1138.)

The method of calculation of damages for such things as translations or preparing marriage certificates which respondents' counsel presented in argument was to multiply the number of hours Hassan spent on those tasks by the amount he earned per hour for performing wedding

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[5] For this reason, we reject appellants' argument that the court erred in the jury instruction on conversion.

or mourning ceremonies. The method is not on its face improper.

Hassan also suffered assault and battery, and both Hassan and Guity suffered an invasion of privacy. The law of compensatory damages is based on the principle that a person who is injured shall be justly compensated to a degree commensurate with the injury sustained. (*People v. Southern California Edison Co.* (1976) 56 Cal.App.3d 593, 604.) These awards were proper under that principle.

Ashraf's, Shahab's, and Shahram's Liability

Appellants argue that even if the compensatory awards are proper, no damages may be assessed against Ashraf, Shahab, or Shahram, since there is no evidence of any wrongdoing by any of those individuals. They argue that the verdicts against them are based only on conspiracy theories, and that there is insufficient evidence for any conspiracy. We consider each appellant separately.

First, there was evidence in the record that Ashraf removed items from Hassan's apartment. She trespassed at Guity's home, threatened to kill Guity's sons, and caused distress to Hassan and Guity. She was involved in the incident at the Amiri home, where she grabbed Guity to prevent her from entering the house. As to Ashraf's liability to Hassan, this evidence is sufficient to support the jury's finding that Ashraf is liable for all of the pre-filing compensatory damages.

However, we do not see that, as to Ashraf's activities, the damages in favor of Guity are supported by the

evidence. The jury found that Ashraf was liable to Guity for trespass, intentional infliction of emotional distress, and invasion of privacy. "A mere trespass, without injury or occupancy, will justify only nominal damages." (6 Witkin, Summary of Cal. Law (9th ed., 1988) Torts, §1460, p. 933.) That is all that occurred here. Further, we see no evidence of the extreme and outrageous conduct necessary to support an action for intentional infliction of emotional distress, and no evidence that Ashraf's wrongdoing caused damages of $6,700 on the invasion of privacy theory. We thus find that judgment notwithstanding the verdict should have been granted on this point. We order the compensatory damage award against Ashraf in favor of Guity reversed, and judgment entered in Ashraf's favor on this point.

As to Shahab and Shahram, we note first that the damage awards are clearly based at least in part on a finding of conspiracy. We draw this conclusion from the jury's finding that both Shahab and Shahram committed a conversion and a trespass against Hassan. There is no evidence that either brother committed any direct acts in this regard. The verdicts must have been based on a conspiracy theory.

We find that there is no substantial evidence to support a finding of conspiracy as to either Shahab or Shahram. In order to establish liability based on conspiracy, a plaintiff must show that the defendant and at least one other concurred in the tortious scheme with knowledge of its unlawful purpose. Concurrence and knowledge can be inferred from the circumstances, but may not be based on suspicion, speculation, supposition, or conjecture. (*Wilcox v. Superior Court (Peters)* (1994) 27 Cal.App.4th

809, 829.) That is all that respondents have presented here.

Respondents argue that a conspiracy is established by both brothers' knowledge that Hassan was seeking the return of items he believed that Farnaz had stolen, by their knowledge that Hassan was trying to end his relationship with Farnaz, by the evidence that Shahab provided financial support to Farnaz, and because all appellants had "merged identities." As to financial support, the cited evidence establishes only that at time of trial, Shahab financially supported Farnaz, at least to some extent. On the issue of merged identities, respondents cite Holakouee's testimony that in his opinion the relationship between members of the Hadji-Elias family was close to an unhealthy degree, without clear "ego boundaries." Neither this evidence, nor the evidence that the brothers knew that Hassan believed he had been aggrieved by Farnaz, establishes a conspiracy.

Respondents also argue that from the evidence that Shahab sometimes attended Monday night poetry class the jury could reasonably have concluded that he was part of a "plot to seduce Hassan," and was thus liable on all causes of action. We do not believe that the evidence would support such a conclusion.

Since there is insufficient evidence to support liability on a conspiracy theory, we are left to examine the evidence of wrongdoing by Shahab and Shahram personally. First, as we have seen, there is no evidence supporting the findings that Shahab and Shahram committed any conversion against Hassan. Further, we see no evidence that Shahram committed any tort against either Guity or

Hassan in the pre-filing period. Respondents argue that the evidence established that Shahram was involved in the incident at Dr. Shamie's. Our examination of the record reveals no such evidence. Regarding that incident, Guity testified that after the appointment, "one of the brothers" blocked her way and stopped her from getting into the elevator. She did not know which brother did this, and the testimony is not substantial evidence for any finding.

Since there is insufficient evidence that Shahram committed any tort against either Hassan or Guity, we reverse the judgment as to him and order judgment entered in his favor.

As to Shahab, our review of the record indicates that he was involved in three incidents. First, he trespassed at Guity's home in 1989. In that incident, he and his mother and sister demanded to be admitted to the house to talk Hassan. In December of 1989, Shahab was present at the incident outside the Amiri house. He held Hassan's elbow and pulled at him to prevent him from leaving. Guity testified that as a result of the incident, Hassan was bent over and short of breath. Finally, on December 10, about a week after the party at the Amiri home, Farnaz, Shahab, and Ashraf returned to Guilty's home. The testimony regarding that event indicates that while Farnaz and Ashraf quarreled with Guity, and perhaps approached her front door, Shahab stayed on the sidewalk, talking to a guest of Guity's.

As to torts against Guity, this evidence is insufficient to support an award of $6,700, and must be reversed, and judgment entered in Shahab's favor.

The award must similarly be reversed as to Hassan. The damages awarded by the jury clearly include sums for the items converted by Farnaz and Ashraf. As we have seen, Shahab cannot be held liable for those sums. The few acts in which he directly took part do not support the damage award.[6]

4. Punitive damages

Appellants argue that there is no evidence to support the jury finding of malice as to any appellant, that the damage award is excessive both because appellants' conduct does not warrant such a large award, and that the damage award is excessive in comparison with appellants' net worth.

We have already determined that Shahram and Shahab have no liability for any compensatory damages, and that Ashraf has no liability to Guity for compensatory damages. The punitive awards based on those

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[6] Respondents also argue that Shahab is liable under Vehicle Code section 17150, as the owner of the car Farnaz normally drove. That statute provides that "Every owner of a motor vehicle is liable . . . for . . . injury to person or property resulting from a negligent or wrongful act or omission in the operation of the motor vehicle, . . . by any person using or operating the same with the permission, express or implied, of the owner." While there is evidence that Farnaz used the car to cause injury in some of the post-filing incidents, there is no such evidence pre-filing. Respondents' argument that Shahab is liable because Farnaz drove the car to Guity's and Hassan's homes, there to commit various torts, is not supported by authority, and seems to us to be contrary to the language of the statute.

compensatory awards must also fail. Thus, we review only the judgment ordering Farnaz to pay $330,000 in punitive damages to Hassan and $15,200 to Guity, and ordering Ashraf to pay $190,000 to Hassan. We find these awards excessive.

"The purpose . . . of punitive damages [awards] . . . is a purely public one. The public's goal is to punish wrongdoing and thereby to protect itself from future misconduct. . . . [T]he key question before the reviewing court is [thus] whether the amount of damages 'exceeds the level necessary to properly punish and deter.' [Citations.]" (*Adams v. Murakami* (1991) 54 Cal.3d 105, 109). "The public may be well served by an award which punishes and deters, but not by one which cripples or destroys a defendant." (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1282.)

In order to determine whether an award of punitive damages is appropriate under this standard, we must we [sic] consider the nature of the wrong-doing, the amount of the compensatory damages, and the defendant's wealth. (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 928.)

First, this wrong-doing was a purely private matter, the result of difficult and complicated personal relationships between the two families. There was no allegation of fraud on the public. No issue in the case concerns any question of public policy or protection of the public. Indeed, none of the factual or legal questions affected anyone other than the parties to the case. Given the purely private nature of the dispute, and the lack of questions of public interest, we find the punitive damages excessive.

On this question, we also note that the trial was characterized by disruptions and outbursts by Farnaz. She violated court orders and exhibited unreason [sic] and vehement passions. It seems almost certain that her conduct in court enhanced the jury's perception of the reprehensibility of these torts, so that the punitive damage awards were based in part on passion and prejudice caused by this [sic] acts, and not on the tortious conduct. (*Goshgarian v. George* (1984) 161 Cal.App.3d 1214, 1230.)

Next, we consider the fact that although the ratio of punitive damages to compensatory damages is not particularly high, the compensatory damages are reduced by this appeal. When the jury awarded the punitive damages, the award of compensatory damages in favor of Hassan and against Farnaz and Ashraf was $300,000. Since that time, we have reversed one-third of those damages. Similarly, the jury award of $12,800 jointly and severally against Farnaz and Ashraf has been reduced to an award of $6,7000 [sic] against Farnaz alone.

Finally, the evidence introduced by respondents regarding Farnaz's and Ashraf's financial condition indicates that their means are limited, and the awards excessive.

At the punitive damages trial, the evidence was that neither Farnaz nor Ashraf had a job or any savings. Their living expenses were paid by Shahab, the only member of the family who was working. Ashraf's only asset was a house in West Los Angeles worth between $435,000 and $510,000, and a partial interest in a house in Santa Monica. The house in Santa Monica was owned by Ashraf, Shahram, Farnaz, and another brother. It was worth

between $375,000 and $400,000. The Santa Monica house had been the subject of a number of inter-family quit claim deeds between the members of the Hadji-Elias family. In 1979, there was a lien of $179,000 on the West Los Angeles house. Farnaz's only asset was her partial interest in the Santa Monica house.

Thus, respondents established that Farnaz's net worth is some portion of the $370,000 to $400,000 the value of the Santa Monica house. As appellants argue, she also has a joint and several liability of $206,700 to Hassan and Guity. After this award is paid, her net worth would be reduced to, at most $193,300. The punitive damage awards against her, totaling $342,000, are far in excess of her net worth.

Ashraf's net worth is the $435,000 and $510,000 value of the West Los Angeles house, minus whatever amounts remained on the lien, and her share of the value of the Santa Monica house. She also has a joint and several liability of $200,000 to Hassan. The punitive damage awards against her of $190,000 is excessive.

5. Other error[7]

Appellants contend that the court erred in at least fourteen other rulings and was biased in favor of respondents, leading to a "circus atmosphere." We have examined each of the contentions raised in the brief, and find no reversible error, either singularly or cumulatively.

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[7] For reasons which are apparent in this opinion, we need not and do not reach appellants' contentions that the jury was wrongly instructed on aiding and abetting, and on liability under Vehicle Code section 17510.

Disposition

As to Farnaz Hadji-Elias, the judgment of joint and several liability to Hassan Shahbaz for compensatory damages in the amount of $200,000 is affirmed, as is the judgment of joint and several liability to Guity Shahbaz-Ellis for compensatory damages in the amount of $6,700. The additional compensatory damage awards for damages sustained after the filing of the complaint are reversed.

As to Ashraf Hadji-Elias, the judgment of joint and several liability to Hassan Shahbaz for compensatory damages in the amount of $200,000 is affirmed. The additional compensatory damage award for damages sustained after the filing of the complaint is reversed. The judgment of joint and several liability to Guity Shahbaz-Ellis for compensatory damages is reversed, as is the judgment awarding punitive damages to Guity Shahbaz-Ellis in the amount of $8,800, and the trial court is directed to enter judgment in favor of Ashraf Hadji-Elias on those claims.

The judgment against Shahram Hadji-Elias and the judgment against Shahab Hadji-Elias are reversed [sic] their entirety, and the trial court is directed to enter judgment in their favor.

As to the punitive damage award against Farnaz and Ashraf in favor of Hassan, and the punitive damage award against Farnaz in favor of Guity, having concluded that the amount of the awards are excessive, we may properly avail ourselves of one of several alternate dispositions. It appears to us that justice will best be served by vacating the amount of the punitive damage awards and

remanding the case for a new trial on that issue only, unless respondents shall within 30 days from the date of the remittitur file with the clerk of this court, and serve on appellants, a written consent to a reduction of the punitive damage awards, as follows: a reduction in the amount assessed in favor of Hassan and against Farnaz to $50,000, a reduction in the amount assessed in favor of Hassan and against Ashraf to $18,000, and reduction in the amount assessed in favor of Guity and against Farnaz to $7,500. In the event that respondents file such a consent, the judgment will be modified to award respondents punitive damages in those amounts, and as so modified, affirmed. (*Rosener v. Sears Roebuck and Co.* (1980) 110 Cal.App.3d 740, 757; *Goshgarian v. George, supra,* 161 Cal.App.3d pp. 1230-1231.)

Judgment on the cross-complaint is affirmed.

All parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ARMSTRONG, J.

We concur.

TURNER, P.J.

GREGNON, J.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 5 DATE: 01/06/97

Krane & Smith
Marc Smith
16255 Ventura Blvd.
Suite 600
Encino, CA. 91436 2302

RE: Shahbaz, Hassan
vs.
Hadji-Elias, Farnaz
2 Civil B087315
Los Angeles NO. WEC142752

THE COURT:

Petition for rehearing denied.

ORIGINAL

Ruling due 1-13-97
Opinion by Justices Armstrong, Turner, Godoy
Answer due 1-6-97
December 27, 1996
2d Civil No. B087315

JAN - 6 1997
Denied
Armstrong Turner

IN THE COURT OF APPEAL OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION 5

FARNAZ HADJI-ELIAS, ASHRAF HADJI-ELIAS, SHAHAB HADJI-ELIAS and SHAHRAM HADJI-ELIAS,

Defendants and Appellants

vs.

HASSAN SHAHBAZ and GUITY SHAHBAZ ELLIS,

Plaintiffs and Respondents

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY, THE HONORABLE BARBARA MEIERS, MUNICIPAL COURT JUDGE SITTING AS SUPERIOR COURT JUDGE

Los Angeles Case No. WEC 142752

PETITION FOR REHEARING

COURT OF APPEAL - SECOND DIST.
(Filed Dec. 27, 1996)

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Mark E. Goodfriend, Esq. (#97188)
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Attorneys for Appellants and Defendants
FARNAZ HADJI-ELIAS and
ASHRAF HADJI-ELIAS

2d Civil No. B087315

IN THE COURT OF APPEAL OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION 5

FARNAZ HADJI-ELIAS, ASHRAF HADJI-ELIAS, SHAHAB HADJI-ELIAS and SHAHRAM HADJI-ELIAS,

Defendants and Appellants

vs.

HASSAN SHAHBAZ and GUITY SHAHBAZ ELLIS,

Plaintiffs and Respondents

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY, THE HONORABLE BARBARA MEIERS, MUNICIPAL COURT JUDGE SITTING AS SUPERIOR COURT JUDGE

Los Angeles Case No. WEC 142752

PETITION FOR REHEARING

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FARNAZ HADJI-ELIAS and ASHRAF HADJI-ELIAS

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This is a petition for rehearing from an opinion which destroys the life of a woman and her elderly mother. For the reasons set forth below, Appellants respectfully ask that the petition be granted.

I. STATEMENT OF THE CASE

Appellants **FARNAZ HADJI-ELIAS** ("**FARNAZ**") AND **ASHRAF HADJI-ELIAS** ("**ASHRAF**") hereby petition this Court for a rehearing of those portions of the Court's Opinion of December 12, 1996 (1) conditionally allowing punitive damages against **FARNAZ** in the sum of $57,500, (2) alternatively granting Respondents a new trial against **FARNAZ** on the issue of punitive damages only, and (3) granting compensatory damages against **ASHRAF.**

The basis for this Petition is that there is no evidence of any net worth of **FARNAZ** upon which to predicate a punitive damage award, pursuant to C.C. § 3295(d) any retrial must be as to the entire case and cannot be as to punitive damages only, and the compensatory damage award against **ASHRAF** is excessive and unsupported by substantial evidence.

II. THE $57,500 CONDITIONAL PUNITIVE DAMAGE AWARDS AGAINST FARNAZ ARE IMPROPER SINCE THERE IS NO EVIDENCE OF NET WORTH.

Here, the Court found that the only basis for punitive damages against **FARNAZ** was her "partial interest" in the Santa Monica house. (Opinion, p. 20.) The Court then reasoned that since the Santa Monica house was valued at

$370,000 to $400,000, and the compensatory damage award was $206,700, **FARNAZ's** worth would be "at most, $193,300." (Opinion, p. 21.) Such analysis, however, was in *the context and for the purpose* of finding that the "punitive damage awards against her, totalling $342,000, are far in excess of her net worth." (*Id.*)

There is no evidence in the record that **FARNAZ** owned more than a proportional interest in the Santa Monica house – approximately 25%.[1] To conclude or infer that **FARNAZ** owned more than 25% would be sheer speculation. A deed conveying property to two or more grantees, without designating the portions conveyed to each, presumptively conveys to each an undivided proportional interest. *Rich v. Smith* (1915) 26 Cal.App.775, 148 P. 545; *see also* C.C. §§ 685, 686.

Consequently, for punitive damage purposes, there is no evidence that the value of **FARNAZ's** partial interest was more than $100,000. After deducting the compensatory damage award (Opinion, p. 22), her net worth is negative. Since a punitive damage award generally may not exceed 10% of a defendant's net worth (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1596), **FARNAZ's** net worth of less than zero precludes any punitive damage award against her.

Thus, even the reduced $57,500 punitive damage awards conditionally allowed against **FARNAZ** (Opinion, p. 22) cannot stand, and the punitive damage awards against her must be reversed in their entirety.

---

[1] The four deeds in Exhibits 45a and 45b reflect that Farnaz's proportional interest would be 23.33%.

III. RETRIAL ON THE ISSUE OF PUNITIVE DAMAGES ONLY WOULD BE IMPROPER.

An award of punitive damages must be rendered by the same jury that awarded compensatory damages in favor of the plaintiff and that found oppression, fraud or malice. Civil Code Section 3295(d) ("Evidence of profit and financial condition shall be presented to the same trier of fact that found for the plaintiff and found one or more defendants guilty of malice, oppression or fraud").

Subdivision (d) was added to Civil Code Section 3295, effective in 1988. The authorities cited by this Court at page 22 of its Opinion – *Rosener v. Sears Roebuck & Co.* (1980) 110 Cal.App. 3d 740, 757 and *Goshgarian v. George* (1985) 161 Cal.App.3d 1214, 1230-1231 – predate the adding of subdivision (d) to Section 3295.

The issue is whether the authority of a appellate court to order a new trial on the issue of the amount of punitive damages only survives Civil Code Section 3295(d). Appellants respectfully submit that it does not. The statute clearly states that the same jury that determines the first phase of a trial bifurcated as to punitive damages must decide the second phase. *Rivera v. Sassoon* (1995) 39 Cal.App. 4th 1045, 1048, 46 Cal.Rptr.2d 144 ("it is reversible error to try the punitive damages issue to a new jury after the jury which found liability has been excused"); *City of El Monte v. Superior Court (Bullen)* (1994) 29 Cal.App.4th 272, 276-277, 34 Cal.Rptr.2d 490 ("Section 3295, subdivision (d) . . . leaves no room for the exercise of discretion unless the defendant expressly or tacitly egress otherwise"); *Medo v. Superior Court* (1988) 205 Cal.App.3d 64, 68-29, 251 Cal.Rptr.924 ("section 3295

requires that compensatory and punitive damages be determined by the same jury").

Consequently, a retrial on the issue of punitive damages only would be improper and violative of C.C. § 3295(d). If there is to be a retrial as to punitive damages against **FARNAZ**, there must be a retrial on all issues as to her.

IV. THE COMPENSATORY DAMAGE AWARD AGAINST ASHRAF IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

In support of its conclusion that the verdict against **ASHRAF** in favor of Hassan for pre-filing compensatory damages in the sum of $200,000 is supported by substantial evidence, the Court cited several factors:

> "First, there was evidence in the record that Ashraf removed items from Hassan's apartment. She trespassed at Guity's home, threatened to kill Guity's sons, and caused distress to Hassan and Guity. She was involved in the incident at the Amiri home, where she grabbed Guity to prevent her from entering the house. As to Ashraf's liability to Hassan, this evidence is sufficient to support the jury's findings that Ashraf is liable for all of the pre-filing compensatory damages." (Opinion, pp. 15-16.)

Most critical, only two of these incidents involved Hassan. As to **ASHRAF** causing distress to Hassan, Appellants respectfully suggest that there is no such evidence in the record. The sole role played by **ASHRAF** in any of these incidents was simply that she was **FARNAZ's** mother.

Finally, we are left with slight, contradictory, ambiguous evidence in the record that **ASHRAF** purportedly participated in the removal of certain items from Hassan's apartment. Assuming arguendo that this is substantial evidence for purposes of liability, it is not sufficient to support the $200,000 damages award. Such award against **ASHRAF**, like the invalid awards against **SHAHRAM** and **SHAHAB**, was the result of passion and prejudice against **FARNAZ** and misconceived notions of conspiracy and joint and several liability. The evidence of **ASHRAF's** marginal, passive, observer status is insufficient to justify the massive $200,000 verdict against her.[2]

V. CONCLUSION

For the foregoing reasons, the Court's Opinion should be modified as follows:

1. The entire compensatory and punitive damages award against **ASHRAF** and the punitive damage award against **FARNAZ** must be reversed in their entirety; and

2. Any new trial must be as to the entire case against **FARNAZ** or **ASHRAF**.

---

[2] Of course, if the compensatory damage award against **ASHRAF** is reversed the punitive damage award against **ASHRAF** must also be reversed.

DATED: December 27, 1996

KRANE & SMITH

By: /s/ Marc Smith
MARC SMITH
Attorneys for Appellants
and Defendants FARNAZ
HADJI-ELIAS and ASHRAF
HADJI-ELIAS

PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES.

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 16255 Ventura Boulevard, Suite 600, Encino, California 91436.

On December 27, 1996, I served the foregoing document described as **APPELLANTS' PETITION FOR REHEARING** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes for collection and mailing following ordinary business practices, addressed as follows:

Susan K. Pintar, Esq.
LAW OFFICES OF HAROLD GREENBERG
2263 South Harvard Boulevard
Los Angeles, California 90018

The Honorable Barbara Meiers
Division 28
LOS ANGELES MUNICIPAL
110 North Grand Avenue
Los Angeles, California 90012

California Supreme Court
300 South Spring Street, Fl.2
Los Angles, California 90013

[X] BY MAIL

I am readily familiar with this office's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on **December 27, 1996,** at Encino, California.

Valerie Cook

/s/ Valerie Cook

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FARNAZ HADJI-ELIAS, et al., Petitioners, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent. HASSAN SHAHBAZ, et al., Real Parties in Interest.	B116045 (Super.Ct.No. WEC142752) (Barbara Meiers, Judge) ORDER (Filed Oct. 6, 1997)

THE COURT:*

The petition for writ of mandate, filed October 6, 1997, has been read and considered. The petition is denied.

* /s/ Turner, P.J.
TURNER, P.J.
/s/ Armstrong, J.
ARMSTRONG, J.
/S/ Godoy Perez
GODOY PEREZ, J.

Second Appellate District, Division Five, No. B116045
S065104

IN THE SUPREME COURT OF CALIFORNIA

FARNAZ HADJI-ELIAS Et Al., Petitioners

v.

LOS ANGELES COUNTY SUPERIOR COURT,
Respondent

HASSAN SHAHBAZ Et Al.,
Real Parties In Interest

(Filed Nov. 19, 1997)

Petition for review DENIED.

GEORGE
Chief Justice

JAN - 3 1997

22.

ORIGINAL

Susan K. Pintar,
State Bar No. 77772
LAW FIRM OF
HAROLD
GREENBERG
2263 South Harvard
Boulevard
Los Angeles,
California 90018-2143
(213) 732-9536

Attorneys for Plaintiffs
and Respondents
HASSAN SHAHBAZ
et al.,

JAN - 6 1997

COURT OF APPEAL - SECOND DIST

FILED

JAN - 1997

JOSEPH A. LANE Clerk

T. MATA

Deputy Clerk

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

HASSAN SHAHBAZ et al., Plaintiffs and Respondents, vs. FARNAZ HADJI-ELIAS et al., Defendants and Appellants.	CASE NO. B087315 (Superior Court No. WEC 142752) CONSENT TO REDUCTION OF PUNITIVE DAMAGE AWARDS

Plaintiffs and Respondents consent to a reduction of the punitive damage awards as determined by this Court as follows: a reduction in the amount assessed in favor of HASSAN and against FARNAZ to $50,000, a reduction in the amount assessed in favor of HASSAN and against ASHRAF to $18,000, and a reduction in the amount assessed in favor of GUITY and against FARNAZ to $7,500.

DATED: January 3, 1997 **LAW FIRM OF HAROLD GREENBERG**

By: /s/ Susan K. Pintar
SUSAN K. PINTAR
Attorneys for
Plaintiffs and
Respondents,
HASSAN
SHAHBAZ et al.,

* * *

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF Los Angeles

I, STELLA CASTILLO, am a resident of/employed in the aforesaid county, State of California. I am over the age of 18 years and not a party to the within action; my business/residence address is: 2263 South Harvard Boulevard, Los Angeles, California 90018-2143

On January 3, 1997, I served the foregoing (set forth the exact title of the document served) CONSENT TO REDUCTION OF PUNITIVE DAMAGE AWARDS on All interested parties in this action by placing a true copy

thereof, enclosed in a sealed envelope, addressed as follows:

Marc Smith, Esq.
Mark E. Goodfriend, Esq.
KRANE & SMITH
16255 Ventura Blvd.,
St. 600
Encino, California
91436-2302

The Honorable Barbara
Meiers
Division 28
LOS ANGELES
MUNICIPAL
110 North Grand Avenue
Los Angeles, California
90012

(check applicable paragraphs)

XX (BY MAIL) I caused such envelope with postage thereon fully paid to be placed in the United States mail at _____, Califonria.

__ (BY MAIL IN THE ORDINARY COURSE OF BUSINESS) I am readily familiar with the business' practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that day in the ordinary course of business: On this date, the above referenced correspondence was placed for deposit at _____ place of business where the correspondence was placed for deposit in the _____, California and placed United States Postal Service,

for collection and mailing following ordinary business practices.

__ (BY PERSONAL SERVICE) I caused such envelope to be served by hand to the offices of the addressee.

XX (State) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

___ (Federal) I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct, and that I am employed in the official member of the bar of this Court at whose direction the service was made.

Executed on January 3, 1997

/s/ Stella Castillo
Signature of Declarant
STELLA CASTILLA
CONSENT TO REDUCTION
OF PUNITIVE DAMAGE
AWARDS

ORIGINAL

2d Civil No. B087315

IN THE COURT OF APPEAL OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION 5

FARNAZ HADJI-ELIAS, ASHRAF HADJI-ELIAS, SHAHAB HADJI-ELIAS and SHAHRAM HADJI-ELIAS,

Defendants/Appellants,

v.

HASSAN SHAHBAZ and GUITY SHAHBAZ ELLIS,

Plaintiffs/Respondents

APPEAL FROM THE SUPERIOR COURT OF
LOS ANGELES COUNTY,
THE HONORABLE BARBARA A. MEIERS, JUDGE

Los Angeles County Case No. WEC 142752

RESPONDENTS' ANSWER TO PETITION FOR REHEARING

Susan K. Pintar (#77772)
LAW FIRM OF HAROLD GREENBERG
2263 South Harvard Boulevard
Los Angeles, California 90018-2143

Attorneys for Respondents/
Plaintiffs, HASSAN SHAHBAZ and
GUITY SHAHBAZ ELLIS

COURT OF APPEAL OF THE
STATE OF CALIFORNIA

FOR THE SECOND APPELLATE DISTRICT

DIVISION: 5

OFFICE OF THE COUNTY CLERK
Los Angeles County
111 North Hill Street
Los Angeles, CA. 90012

RE: Shahbaz, Hassan
vs.
Hadji-Elias, Farnaz
2 Civil B087315
Los Angeles NO. WEC142752
Judge:

* * REMITTITUR * *

I, Joseph A. Lane, Clerk of the Court of Appeal of the State of California, For the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on 12/12/96 and that this order, opinion or decision has now become final.

* * AFFIRMED IN PART AND
REVERSED IN PART. * *

Parties To Bear Their Own Costs.

Witness my hand and the seal of the Court affixed at my office this

JOSEPH A. LANE, Clerk

By: /s/ R.W. Mayfarth
Deputy Clerk

FEB 13 1997

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE SECOND APPELLATE DISTRICT
DIVISION: 5

Krane & Smith
Marc Smith
16255 Ventura Blvd.
Suite 600
Encino, CA. 91436 2302

RE: Shahbaz, Hassan
vs.
Hadji-Elias, Farnaz
2 Civil B087315
Los Angeles NO. WEC142752
Judge:

* * REMITTITUR NOTICE * *

Notice is hereby given that the Remittitur has been issued this date and that the opinion, decision or order entered in the above entitled cause on 12/12/96 is now final.

* * Affirmed In Part and Reversed In Part. * *

Parties To Bear Their Own Costs.

JOSEPH A. LANE, Clerk

By: /s/ R.W. Mayfarth
Deputy Clerk

FEB 13 1997

MUNICIPAL COURT OF LOS ANGELES
JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

HON. BARBARA A. MEIERS, JUDGE
(SITTING AS SUPERIOR COURT)

DIVISION NO. 28

HASSAN SHAHBAZ, ET AL.,
PLAINTIFFS,
VS.
FARNAZ HADJI-ELIAS, ET AL.,
DEFENDANTS.

NO. WEC142752

REPORTER'S TRANSCRIPT

APRIL 22, 1997

APPEARANCES:

FOR THE PLAINTIFFS: SUSAN PINTAR
ATTORNEY AT LAW

FOR THE DEFENDANTS: MARK SMITH
ATTORNEY AT LAW

ROSEMARIE P.
HERNANDEZ
OFFICIAL REPORTER
CSR NO. 9572

ORIGINAL

[p. 2] LOS ANGELES, CALIFORNIA
– TUESDAY, APRIL 22, 1997

MORNING SESSION

(THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN COURT:)

THE COURT: THIS IS THE CASE OF HASSAN SHAHBAZ, ET AL., VERSUS FARNAZ HADJI-ELIAS, ET AL., CASE NUMBER WEC142752.

MS. PINTAR: GOOD MORNING, YOUR HONOR. SUSAN PINTAR ON BEHALF OF PLAINTIFFS.

MS. HADJI-ELIAS: GOOD MORNING, YOUR HONOR. FARNAZ HADJI-ELIAS.

MS. HADJI-ELIAS: GOOD MORNING. SHARAM HADJI-ELIAS.

THE COURT: THE LAST I KNEW THE DEFENDANTS WERE REPRESENTED BY COUNSEL. HAS THERE BEEN ANY SUBSTITUTION FILED TAKING COUNSEL OUT?

MS. HADJI-ELIAS: NO.

THE COURT: YOU ARE REPRESENTED BY COUNSEL; IS THAT CORRECT?

MS. HADJI-ELIAS: YES.

THE COURT: MR. SMITH?

MS. HADJI-ELIAS: YES.

THE COURT: WHERE IS HE TODAY?

MS. HADJI-ELIAS: I DON'T KNOW.

THE COURT: DO YOU KNOW?

MS. PINTAR: I SPOKE WITH HIM JUST THIS MORNING, AND HE SAID THAT HE DOES NOT BELIEVE HE IS STILL REPRESENTING THE [p. 3] DEFENDANTS, AND HE HAD NO OBJECTION TO ANYTHING I WAS DOING, AND HE IS NOT INTENDING TO MAKE AN APPEARANCE.

MS. HADJI-ELIAS: WE HAVE OBJECTIONS, AND WE INFORMED HIM THAT WE HAVE MANY, MANY OBJECTIONS TO THIS, YOUR HONOR.

THE COURT: JUST A MOMENT. HE IS STILL – OF COURSE HE REPRESENTS THEM. I HAVE TO ACT ON THE REMITTITUR ON THE APPEAL. THIS IS PART OF THE APPEAL PROCESS.

MISS BAKER, WOULD YOU PLEASE CALL MR. SMITH'S OFFICES.

IS THAT WHERE HE IS NOW?

MS. PINTAR: YES.

THE COURT: OFF THE RECORD.

(A DISCUSSION WAS HELD OFF THE RECORD.)

THE COURT: ALL RIGHT. WE ARE BACK ON THE RECORD. APPARENTLY COUNSEL FOR THE DEFENDANTS DID NOT UNDERSTAND THAT HE WAS EXPECTED BY THE COURT, THAT HE WAS TO APPEAR. HE HAS BEEN CONTACTED. HE'LL BE HERE IN ABOUT 35 MINUTES, SO I'M SORRY THAT BOTH SIDES HAVE BEEN INCONVENIENCED BY THIS. IT IS

NOT SOMETHING THE COURT HAD ANY CONTROL OVER. I HAVE A JURY TRIAL, BUT I WILL INTERRUPT THAT TRIAL TO TRY AND GET YOUR CASE TAKEN CARE OF. WHEN MR. SMITH COMES DOWN, I DON'T KNOW WHAT OBJECTIONS OR PROBLEMS HIS CLIENTS HAVE THAT THEY WANT HIM TO RECORD FOR THE RECORD. THAT IS BETWEEN HIM AND HIS CLIENTS.

ONE OF THE CONCERNS THAT I HAD, MISS PINTAR, IS – WAS WITH WHETHER OR NOT AN AGREEMENT TO REDUCE THE JUDGMENT HAD BEEN FILED WITHIN 30 DAYS OF THE REMITTITUR. I HAVE NO SUCH RECORD WITHIN MY FILE. IT APPEARS TO ME THAT IF [p. 4] THAT WAS FILED, IT WAS FILED IN EXCESS OF 30 DAYS.

MS. PINTAR: NO, IT WAS FILED WITHIN THE 30 DAYS, AND I THOUGHT I HAD SENT YOU A COPY OF IT.

THE COURT: IT MAY BE. I DON'T WANT TO GET INTO AN EXCHANGE OF THIS NOW IN THE ABSENCE OF MR. SMITH. I JUST WANTED YOU TO BE AWARE THAT THAT IS ONE OF MY CONCERNS. IF YOU COULD USE SOME OF THE TIME WHILE YOU ARE WAITING TO LOOK FOR ANY DOCUMENTATION THAT YOU HAVE THAT WOULD SHOW THAT FILING.

MS. PINTAR: OKAY.

THE COURT: ALL RIGHT.

MS. PINTAR: AND DID YOU GET, BY THE WAY, YOUR HONOR, THE SECOND MODIFIED JUDG-

THE COURT: I REALLY DON'T KNOW. COULD YOU TAKE A LOOK IN OUR FILE. I HAVE NOT BEEN VIEWING THESE WITH CARE AGAINST THE APPELLATE COURT ORDER BECAUSE I DIDN'T KNOW IF I WAS GOING TO GET IN A WRITTEN STIPULATION FROM BOTH COUNSEL, AND I JUST THOUGHT, WELL, I'LL PUT IT ASIDE, AND I'LL SEE WHAT THE TWO ATTORNEYS HAVE TO SAY, BUT I HAVE HAD NO INPUT FROM MR. SMITH. SO LET'S PUT THIS ASIDE, AND YOU CAN LOOK AT THE FILE.

MS. HADJI-ELIAS: WHILE MR. SMITH IS LATE OR WHATEVER.

THE COURT: HE IS GOING TO BE HERE IN ABOUT 35 MINUTES, MA'AM. THAT IS WHAT HE HAS ASSURED ME. YOU GO GET ANOTHER CUP OF COFFEE. COME BACK HERE – IT IS 5 OF 10:00. COME BACK AT 20 OF 11:00 OR 25 OF 11:00. OKAY.

MS. PINTAR: THANK YOU.

MS. HADJI-ELIAS: THANK YOU, YOUR HONOR.

[p. 5] (RECESS TAKEN.)

THE COURT: ALL RIGHT. ON THE SUPERIOR COURT CASE, SHAHBAZ VERSUS HADJI-ELIAS, CASE NUMBER WEC142752. COUNSEL, MAKE YOUR APPEARANCES PLEASE.

MS. PINTAR: SUSAN PINTAR ON BEHALF OF PLAINTIFFS.

MR. SMITH: GOOD MORNING, YOUR HONOR. MARK SMITH ON BEHALF OF THE DEFENDANTS, YOUR HONOR.

THE COURT: AND TWO OF THE INDIVIDUAL DEFENDANTS MADE THEIR APPEARANCES EARLIER.

MR. SMITH, I HAD TO ASK YOU TO COME DOWN BECAUSE WE ARE DEALING WITH THE REMITTITUR ON THE APPELLATE MATTER, AND THAT BEING THE CASE, IT IS STILL A PART OF THE APPEAL PROCESS, AND I CANNOT CONCLUDE MATTERS WITHOUT YOUR ASSISTANCE.

MY CONCERN TODAY WAS SIMPLY WITH WHETHER OR NOT THE PLAINTIFF HAD FILED AN AGREEMENT TO REDUCE THE JUDGMENT WITHIN 30 DAYS OF THE REMITTITUR. THE REMITTITUR CAME DOWN – LET'S SEE, IS IT FEBRUARY? YES. FEBRUARY 13TH, '97, IS WHEN THE REMITTITUR CAME DOWN. AND THEN THERE IS A JANUARY 3RD, '97 – WELL, I'M NOT SURE THAT'S WHEN IT CAME DOWN.

MS. PINTAR: I THINK IT WAS DECEMBER 12TH, AND THEN I HAD 30 DAYS TO FILE THE CONSENT.

THE COURT: I SEE A CONSENT WAS FILED ON JANUARY 3RD, 1997.

MR. SMITH, DO YOU RECALL IF THAT WAS TIMELY WITHIN THE 30 DAYS OF THE REMITTITUR?

MR. SMITH: YOUR HONOR, I BELIEVE MY RECOLLECTION WAS [p. 6] THAT THEIR – THE

REMITTITUR CAME DOWN AROUND THE SECOND WEEK OF DECEMBER.

THE COURT: OKAY.

MR. SMITH: BUT I DON'T HAVE THE FILE WITH ME TODAY, AND I'M NOT SURE IF THAT WAS ACTUALLY CORRECT.

MS. PINTAR: IT WAS DECEMBER 12TH, AND I HAVE, YOUR HONOR, FROM THE APPELLATE COURT THE CONSENT THAT THEY FILED. IT WAS FILED WITH PERMISSION, AND THEY ACCEPTED OUR CONSENT.

THE COURT: ALL RIGHT. COULD YOU LET MISS BAKER SEE THAT. THAT WAS MY – WELL, THIS IS INTERESTING BECAUSE I HAVE A REMITTITUR HERE THAT'S DATE STAMPED. IT SAYS FILED FEBRUARY 13TH, 1997, IN ALL EVENTS, WITH THE APPELLATE DECISION HAVING BEEN ISSUED DECEMBER 12, '96.

MR. SMITH: THAT IS WHAT I RECALL.

THE COURT: NEVERTHELESS, WHAT THEY SAID WAS THAT THE – I THINK IN THE OPINION THEY HAVE GIVEN TILL 30 DAYS AFTER THE FILING OF THE REMITTITUR EITHER WAY, IT'S EITHER TIMELY OR IT IS PRENATURE, BUT EITHER WAY IT CAN BE TREATED AS TIMELY. YES, IT SAYS "SHALL WITHIN 30 DAYS FROM THE DATE OF THE REMITTITUR FILED WITH THE CLERK."

SO YOU WERE ACTUALLY EARLY IN YOUR FILING, MISS PINTAR. THE REMITTITUR COMES DOWN AFTER THE OPINION BECOMES FINAL, AND THEN

THE TRIAL COURT HAS TO ACT UPON IT ONE WAY OR THE OTHER. EITHER I HAVE TO ENTER JUDGMENT A OR JUDGMENT B. BECAUSE YOU FILED THAT CONSENT, THOUGH, THE FACT THAT IT'S EARLY DOES NOT MAKE IT OUTSIDE THOSE 30 DAYS. IT JUST – IT'S WITHIN 30 DAYS OF THE REMITTITUR. IT IS JUST EVEN BEFORE THE REMITTITUR, SO IT IS TAKEN CARE OF.

[p. 7] MR. SMITH: JUST FOR THE RECORD, YOUR HONOR, THE DEFENDANT DID NOT WAIVE ANY OBJECTION THAT THEY HAVE TO THE FACT THAT THE – THAT THAT MAY NOT BE TIMELY. THE FACT THAT IT WAS FILED BEFORE AND PREMATURE MAY DISALLOW THE ACTUAL REMITTITUR. IN OTHER WORDS, I'M CONCERNED THAT THE CONSENT WAS NOT PROCEDURALLY PROPERLY DONE. I JUST DON'T WANT TO WAIVE THAT ISSUE.

MS. PINTAR: WELL, THE COURT SAID IT WAS FILED WITH PERMISSION.

THE COURT: YES. THAT'S DATED JANUARY 9TH, 1997. SO IT SEEMS TO ME THAT IF MISS PINTAR RELIED ON THE APPELLATE COURT'S ACCEPTANCE OF THIS, THEY ARE GOING TO HAVE A VERY HARD TIME TELLING HER SHE SHOULDN'T HAVE. THEY CERTAINLY SHOULD HAVE SAID TO HER, WAIT. HOLD OFF ON THIS UNTIL 30 DAYS AFTER OUR REMITTITUR.

SO I UNDERSTAND YOU ARE MAKING YOUR OBJECTIONS FOR THE RECORD. I'M GOING TO ACCEPT IT. I'M GOING TO TREAT IT AS TIMELY. I BELIEVE IT WAS.

MR. SMITH: AND JUST FOR THE RECORD SO IT IS CLEAR, WE DO NOT WAIVE ANY OBJECTION WITH REGARD TO THE REMITTITUR BEING UNTIMELY.

THE COURT: NO, THE REMITTITUR IS NOT UNTIMELY.

MR. SMITH: I MEAN THE CONSENT.

THE COURT: YOU ARE SAYING THE CONSENT TO THE REDUCTION BEING UNTIMELY?

MR. SMITH: YES.

THE COURT: SO ANY OBJECTIONS ON THAT SCORE ARE NOW OVERRULED. NOW, I HAVE TO ACT IN ACCORDANCE WITH THE [p. 8] REMITTITUR AND THE CONSENT TO REDUCTION. AND THAT IS TO PRONOUNCE A NEW JUDGMENT – I GUESS A MODIFIED JUDGMENT IN KEEPING WITH THIS OPINION THAT WAS ISSUED. LET'S SEE WHAT THE COURT SAID ON THAT.

THERE ARE VARIOUS DIRECTIONS HERE WHERE THE APPELLATE DEPARTMENT DIRECTS ME TO ENTER JUDGMENT IN FAVOR OF CERTAIN PERSONS. THEN IT SAYS THAT ONCE THIS CONSENT IS FILED THE JUDGMENT WILL BE MODIFIED TO AWARD RESPONDENTS CERTAIN AMOUNTS, BUT IT DOESN'T SPECIFICALLY SAY THAT I AM TO MODIFY IT. I THINK IT IS IMPLICIT, THOUGH, IF THEY WANT ME TO ENTER A CHANGED JUDGMENT AS TO SOME DEFENDANTS WHAT I SHOULD BE DOING IS ENTERING A MODIFIED JUDGMENT AS TO THE WHOLE

INCORPORATING EACH OF THE CHANGED TERMS IN ACCORDANCE WITH THIS DECISION.

IS THAT THE WAY YOU INTERPRET IT ON BOTH SIDES?

MS. PINTAR: I DO, YES, YOUR HONOR.

MR. SMITH: ASSUMING THAT THE CONSENT IS PROPERLY –

THE COURT: YES.

MR. SMITH: – AND TIMELY FILED I WOULD AGREE WITH THAT INTERPRETATION.

THE COURT: ALL RIGHT. THEN I'VE HAD A PROPOSED JUDGMENT SUBMITTED BY MISS PINTAR. SHE SAYS TO ME THAT SHE HAS SUBMITTED TWO OF THEM.

MR. SMITH: YOUR HONOR, MY –

THE COURT: I HAVE ONE DATED APRIL 11TH.

MS. PINTAR: I DIDN'T THINK I DATED –

THE COURT: I'M SORRY. ONE IS APRIL 7TH THAT SAYS, [p. 9] "DEAR MR. SMITH: ENCLOSED PLEASE FIND" – AND THEN THERE IS A PROPOSED MODIFIED JUDGMENT. AND THEN I HAVE A COVER LETTER FOR AN APRIL 11TH MAILING WITH REGARD TO PROPOSED MODIFIED JUDGMENT THAT IS DIRECTED TO THE COURT, AND THAT WAS ATTACHED TO THE APRIL 7TH DRAFT THAT WENT TO MR. – COPY OF THE APRIL 7TH DRAFT TO MR. SMITH.

MS. PINTAR: RIGHT. IT SHOULD BE SIX PAGES LONG, THE PROPOSED MODIFIED JUDGMENT.

THE COURT: SO IS THAT ALL THERE IS TO IT? THAT'S THE ONLY ONE YOU'VE DONE, MISS PINTAR?

MS. PINTAR: YES. YES. I DID TWO OF THEM, BUT THE ONE THAT'S DATED – NOT DATED, THAT IS SIX PAGES LONG IS THE ONE THAT INCORPORATES I BELIEVE ALL OF THE –

THE COURT: THIS IS THE ONE YOU THINK I SHOULD SIGN?

MS. PINTAR: YES. IT IS SIX PAGES LONG?

THE COURT: YES.

MS. PINTAR: YES, THAT'S IT THEN.

THE COURT: AND DID YOU TREAT IN IT THE ISSUES OF THE ONGOING INJUNCTIVE ORDERS WHICH THE COURT HAD MADE?

MS. PINTAR: I DID, BUT I DID NOT INCLUDE THE TWO BROTHERS, AND BELIEVE THAT THEY SHOULD BE INCLUDED BECAUSE – YEAH. THAT STARTS ON PAGE 3. IN THE MIDDLE IT SAID IT IS FURTHER ORDERED ADJUDGED – ADJUDGED –

THE COURT: THIS IS BASED ON THE ORIGINAL JUDGMENT BUT JUST SOME REVISIONS IN LANGUAGE?

MS. PINTAR: YES.

THE COURT: I'M HOPEFUL THAT WE STILL HAVE THE ORIGINAL JUDGMENT OUT HERE.

[p. 10] MS. PINTAR: YES I HAVE THE ORIGINAL JUDGMENT.

THE COURT: I'M NOT SURE WE DO. THE FILES WENT BACK TO SANTA MONICA.

DO WE HAVE ANY OTHER FILES OTHER THAN THIS ONE, MISS BAKER?

THE CLERK: I BELIEVE SO.

THE COURT: SO HOPEFULLY WE'LL HAVE IT IN OUR FILES. I DON'T KNOW THAT THE BROTHERS CAN BE INCLUDED. THEY SAID TO ORDER A JUDGMENT IN FAVOR OF THE BROTHERS. THEY NEVER DISCUSSED THE INJUNCTIVE ISSUE. ALL THEY DISCUSSED WERE DAMAGE ISSUES. BUT IT SEEMS TO ME THAT IF YOU WANTED THAT CORRECTED, YOU SHOULD HAVE SAID TO THE COURT OF APPEAL, YOUR ORDER IS NOT CLEAR WITH RESPECT TO WHAT YOU ARE DOING ON THE INJUNCTIVE ISSUE. SO I THINK I CAN'T INCLUDE THEM IN THAT.

MS. PINTAR: THAT'S FINE, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. SMITH: YOUR HONOR, IF I MAY.

THE COURT: DID YOU HAVE ANY PROBLEMS WITH WHAT SHE DRAFTED, MR. SMITH?

MR. SMITH: A FEW. NOTHING REALLY THAT MAJOR. THERE IS SOME LANGUAGE IN THE JUDGMENT DEALING WITH THE AMOUNT OF THE REDUCTION OF THE AWARD WHICH I DON'T THINK WE REALLY NEED TO INCLUDE IN THE JUDGMENT. FOR EXAMPLE ON PAGE 2, PARAGRAPH NUMBER 1 –

THE COURT: AMOUNT 50,000 REDUCED FROM THREE THIRTY.

MR. SMITH: AND, WELL, EVEN ABOVE THAT IN PARAGRAPH NUMBER 1 IT SAYS 200,000 REDUCED FROM $300,000. I DON'T THINK THOSE THINGS ARE APPROPRIATE FOR A JUDGMENT.

[p. 11] THE COURT: ALL RIGHT, SO – BUT YOU DON'T DISAGREE WITH THE AMOUNTS?

MR. SMITH: NO. THE AMOUNTS ARE CORRECT.

THE COURT: YOU JUST WANT THE REDUCTION LANGUAGE REMOVED.

MR. SMITH: YES. AND I THINK THAT IS PROBABLY ON EACH PAGE OF THE JUDGMENT THERE IS LANGUAGE LIKE THAT.

THE COURT: ALL RIGHT. GO AHEAD.

MS. PINTAR: WELL, ACTUALLY THE ONLY REASON I DID THAT WAS SO IT WOULD BE CLEAR IF SOMEONE LOOKED IN THE COUNTY RECORD AND SAW THE OTHER JUDGMENT, THE FIRST JUDGMENT, WHAT HAD HAPPENED.

MR. SMITH: FOR THE PURPOSES OF AN ACTUAL JUDGMENT I DON'T THINK YOU HAVE TO HAVE THAT TYPE OF LANGUAGE IN THERE IF YOU JUST WANT THE AMOUNT. IT COULD CAUSE SOME CONFUSION LATER ON WHEN ANYBODY TRIES TO ENFORCE THE JUDGMENT WITH OTHER NUMBERS. I THINK THERE IS AN AWARD AND JUDGMENT AND I'VE NEVER SEEN A JUDGMENT THAT HAD –

THE COURT: I THINK THAT WHAT THE COURT COULD DO WOULD BE SIMPLY TO PUT IN A PREFATORY PARAGRAPH THAT WOULD SAY THAT THIS JUDGMENT MODIFIES AND SUPERSEDES ALL PRIOR JUDGMENTS, SO THAT IF THERE WAS A RECORDED JUDGMENT IN ONE RESPECT THIS DOCUMENT WOULD CLEARLY SET FORTH WHAT THE DIFFERENCES WERE.

MR. SMITH: I THINK THE FIRST PARAGRAPH – THAT THE OTHER ONE WAS OVERRIDDEN, AND I WOULD SIMPLY INDICATE THAT.

MS. PINTAR: BUT ALSO TO BE SURE THAT IT WAS A MODIFIED JUDGMENT AND THAT THAT JUDGMENT AS OF THAT DATE THE ORIGINAL JUDGMENT IS SIMPLY MODIFIED.

[p. 12] MR. SMITH: NO, YOUR HONOR. TECHNICALLY IT IS NOT A MODIFIED JUDGMENT. IT IS THE JUDGMENT. AND IF YOU LOOK AT THE TOP PAGE OF PARAGRAPH 2 – PAGE 2, IT DISCUSSES THE FACT THAT THERE IS REMITTITUR ISSUED. THERE IS ONLY ONE JUDGMENT. THE DECISION WAS MODIFIED, BUT THERE IS ONLY ONE JUDGMENT. IT WASN'T AS IF THE JUDGMENT WAS –

THE COURT: I THINK WE ARE TALKING ABOUT SEMANTICS. IT DOESN'T MATTER HOW IT IS CAPTIONED VERY MUCH.

MR. SMITH: YOU ARE PROBABLY CORRECT, YOUR HONOR, BUT I THINK ANY REFERENCE TO THE HIGHER NUMBERS DOESN'T DO ANYTHING TO THE JUDGMENT AND COULD CAUSE CONFUSION.

THE COURT: I MAY REMOVE THAT LANGUAGE I JUST SAID IN FAVOR OF PUTTING IN A PARAGRAPH AT THE OUTSET THAT SIMPLY SAYS THAT THE FOLLOWING IS THE JUDGMENT MODIFIED FROM AN EARLIER JUDGMENT, DAH, DAH, DAH, OF X DATE, YOU KNOW, AND WHICH NOW SUPERSEDES AND CORRECTS THAT JUDGMENT AND SOMETHING TO THAT EFFECT. THAT'S ALL. AND THEN YOU WOULD JUST SET FORTH THE NEW TERMS.

MR. SMITH: ON PAGE 2 THE TOP PARAGRAPH DOES STATE THAT THERE WAS A REMITTITUR ISSUED. I THINK THAT WOULD COVER THAT ISSUE.

THE COURT: NO, THIS DOES NOT. YOU UNDERSTAND SHE'S CONCERNED WITH YOUR CLIENT'S INTEREST AT THIS POINT. SHE IS CONCERNED THAT THERE IS A JUDGMENT SITTING IN THE COUNTY RECORDER'S OFFICE THAT SAYS THAT THEY OWE FAR MORE THAN THIS JUDGMENT WILL SAY THAT THEY OWE. SHE DOES NOT WANT SOMEBODY ELSE FOCUSING ON THAT –

MR. SMITH: I UNDERSTAND THAT, YOUR HONOR.

[p. 13] THE COURT: – LOCATING THAT, FOCUSING ON IT AND THEN SAYING TO THEM, WHAT DO YOU MEAN YOU ONLY HAVE DEBTS OF X AMOUNT TO PEOPLE? WE HAVE THIS COPY OF THIS JUDGMENT SITTING HERE THAT SAYS, YOU KNOW, YOU HAVE MUCH WORSE CREDIT. YOU OWE THIS MUCH MORE. THIS DOES NOT SAY HERE AT THE TOP

OF THIS PAGE THAT IT SUPERSEDES AND ELIMINATES THAT EARLIER JUDGMENT.

MR. SMITH: YOUR HONOR, THE DOCUMENT ITSELF IS ENTITLED "MODIFIED JUDGMENT AFTER APPEAL," AND I WOULD THINK THAT ANYBODY LOOKING AT THE FILE WOULD SEE THAT.

THE COURT: THIRD PARTIES WHO KNOW NOTHING ABOUT THIS CASE MIGHT NOT EVEN KNOW THAT THAT IS AN APPEAL FROM THAT OTHER JUDGMENT. THEY DON'T KNOW WHAT A REMITTITUR IS. THEY DON'T KNOW FROM NOTHING, SO I THINK IT BEHOOVES THE COURT TO BE VERY SPECIFIC. I DON'T MIND ELIMINATING THIS "REDUCED FROM" LANGUAGE, BUT I THINK THIS DOCUMENT OUGHT TO CLEARLY ON ITS FACE SUPERSEDE THE OTHER DOCUMENT WHICH IS ON FILE IN THE RECORDER'S OFFICE.

MS. PINTAR: THERE IS ACTUALLY TWO JUDGMENTS. THERE IS A COST JUDGMENT AS WELL WHICH I'VE INCORPORATED IN HERE.

THE COURT: SO THERE IS COST JUDGMENT AND THE OTHER BOTH TO BE DEALT WITH. ALL RIGHT.

WHAT ELSE, MR. SMITH?

MR. SMITH: YOUR HONOR, MY ONLY OTHER QUESTIONS CONCERN THE INJUNCTIVE RELIEF, AND I THINK THE COURT HAS ALREADY INDICATED THAT AS TO THE BROTHERS THAT

THERE WILL BE NO INJUNCTION, SO THE INJUNCTION THAT WE HAVE HERE, THAT IS TO BE MODIFIED TO THAT EXTENT. AND MY OTHER QUESTION IS TO [p. 14] WHAT EXTENT IS THIS A PERMANENT INJUNCTION?

THE COURT: I THINK THAT THE COURT – I DON'T HAVE MY ORIGINAL JUDGMENT IN FRONT OF ME, BUT I THINK THAT THE COURT DID RETAIN JURISDICTION BASICALLY OVER THOSE TERMS OF THE JUDGMENT AND MADE IT A CONTINUING PERMANENT INJUNCTION UNLESS AND UNTIL FURTHER MODIFIED BY THE COURT IF MY RECOLLECTION SERVES ME.

MR. SMITH: WELL, I'M INQUIRING, YOUR HONOR. I DON'T BELIEVE THERE HAS BEEN ANY INCIDENTS OR ANY OTHER TYPE OF PROBLEMS DURING THE PAST COUPLE OF YEARS, AND I WOULD ASK AS TO THE INJUNCTIVE RELIEF THAT THAT BE ELIMINATED FROM THE JUDGMENT.

THE COURT: I WOULD HAVE TO HAVE SOME SORT OF MOTION I THINK OR SOMETHING ASKING THE COURT TO UTILIZE THAT JURISDICTION AND TO FURTHER MODIFY THE INJUNCTIVE TERMS, BUT RIGHT NOW I THINK THERE IS NOTHING BEFORE ME I CAN ACT UPON IN THAT REGARD. OKAY.

WHAT'S THE NEXT POINT?

MR. SMITH: I HAVE NO OTHER POINTS, YOUR HONOR.

MS. HADJI-ELIAS: I HAVE, YOUR HONOR, IF I MAY.

THE COURT: NO, YOU MAY NOT. YOU ARE REPRESENTED BY COUNSEL. YOU HAVE COUNSEL. YOU LET HIM SPEAK FOR YOU –

MR. SMITH: MISS HADJI-ELIAS –

THE COURT: – UNLESS HE CONSENTS. IF HE WISHES TO, HE CAN.

MS. HADJI-ELIAS: YOU CONSENT THAT I SPEAK?

THE COURT: MISS HADJI-ELIAS, BE QUIET FOR A MOMENT.

MR. SMITH: MISS HADJI-ELIAS IS REQUESTING THAT THE [p. 15] INJUNCTIVE RELIEF BE ON A SEPARATE FORM THAN THE MONETARY FORM. IT WOULD BE TWO SEPARATE DOCUMENTS PREPARED AND FILED WITH THE COURT.

THE COURT: OBVIOUSLY THAT IS NOT GOING TO HAPPEN BECAUSE THE COURT DOES NOT CHOP UP ITS JUDGMENT INTO LITTLE BITS AND PIECES. AND IN FACT, THE COST JUDGMENT, TECHNICALLY WHAT HAPPENS IS THAT THE CLERK'S OFFICE IS SUPPOSED TO WITH REGARD TO THE ORIGINAL JUDGMENT, THEN, WHICH IS USUALLY JUST A COUPLE OF LINES LONG, THEY MODIFY THAT DOCUMENT, STICK IN THE POST JUDGMENT COSTS RATHER THAN HAVE MORE THAN ONE, QUOTE, "JUDGMENT" OUT THERE. THERE IS A SINGLE-JUDGMENT RULE. EVERYTHING IS SUPPOSED

TO BE IN ONE JUDGMENT, AND THAT'S THE WAY IN WHICH THIS COURT WOULD DRAFT IT.

MR. SMITH: YOUR HONOR, MISS HADJI-ELIAS IS REQUESTING THAT SHE BE ALLOWED TO SPEAK TO THE COURT BRIEFLY, AND I WOULD CONSENT TO THAT.

THE COURT: ALL RIGHT.

MS. HADJI-ELIAS: OKAY. YOUR HONOR, SHE ADDED SOME LANGUAGE WHICH IN HER LETTER TO MR. SMITH SHE SAID SHE ADDED SOME LANGUAGE TO YOUR LANGUAGE, AND THAT IS SHE – FIRST OF ALL SHE ADDED THE SON OF MR. SHAHBAZ, WHICH AT THE TIME OF TRIAL THEY REQUESTED NOT BE ANY RESTRAINING ORDER FOR HIM AND THAT HE NEVER HAD ANY. AND HE – IT – THEREFORE RIGHT NOW IT'S NOT NEEDED. AS A MATTER OF FACT, THEY INSISTED THAT THEY DIDN'T WANT ONE FOR HIM.

THE COURT: I DON'T KNOW. I'LL LOOK AT THE ORIGINAL JUDGMENT. IS THERE ANYTHING ELSE THAT YOU THINK EXCEEDED THE ORIGINAL JUDGMENT?

[p. 16] MS. HADJI-ELIAS: YES. ALSO SHE ADDED A PARAGRAPH ABOUT ME BEING – NOT THAT I WOULD DO. I'M JUST OBJECTING LEGALLY TO THIS. THAT NO YELLING IN PUBLIC PLACES OR THIS. ANYBODY READING THIS MATERIAL IS PREJUDICIAL AGAINST ME ESPECIALLY. AND ALSO THE OTHER FAMILY MEMBERS, IT ALL OVER 18. IF THEY WANT TO ASK FOR A RESTRAINING ORDER, THEY

COULD. NOT EVERYBODY GO UNDER THE GRANDFATHER UMBRELLA, SO –

THE COURT: WHATEVER IS IN THE ORIGINAL JUDGMENT WILL BE IN THIS ONE. IS THERE ANYTHING ELSE YOU THINK IS NOT IN THE ORIGINAL?

MS. HADJI-ELIAS: YES. ALSO THE PLACE OF RESIDENCE. THEY SAY AT THIS PLACE OR ANYWHERE THEY MAY RESIDE, SO AT AN TIME THEY MAY SAY, OKAY, WE RESIDED THERE, IF THEY SEE ME ON OLYMPIC BOULEVARD, THEY COULD COME AND SAY WE RESIDE HERE NOW.

THE COURT: WE'LL WORRY ABOUT THAT WHEN WE COME TO IT.

MS. PINTAR: YES, BECAUSE PEOPLE DO MOVE AND –

THE COURT: AND I'M SURE YOUR CLIENTS DON'T WANT TO ANNOUNCE TO HER IN ADVANCE WHERE THEY ARE MOVING TO.

MS. HADJI-ELIAS: I'M NOT LOOKING FOR THAT, YOUR HONOR.

THE COURT: SO WE'LL WORRY ABOUT THAT WHEN WE COME TO IT.

MS. HADJI-ELIAS: I JUST DON'T WANT THEM TO MAKE UP STORIES.

THE COURT: WE'LL WORRY ABOUT IT WHEN WE COME TO IT.

MS. HADJI-ELIAS: I TALKING ABOUT THE LATER POINT OF [p. 17] VIEW.

THE COURT: ANYTHING ELSE?

MS. HADJI-ELIAS: THAT SHE BE PROTECTED FROM YELLING, THAT IS NOT IN THE ORIGINAL ANYWHERE. AND I WOULD LIKE TO REFLECT THAT – OH, YES, THIS IS WHAT HAS BEEN A PROBLEM SINCE 1981. I WOULD LIKE TO REFLECT THAT SINCE '92 OR '93 THERE HAS BEEN NO ALLEGATION AGAINST ANY OF US, AND THERE HAS NEVER BEEN AGAINST MY BROTHERS AT ANY POINT. AND SHE ADDED THIS PARAGRAPH WHICH –

THE COURT: THERE HAVE BEEN PLENTY OF ALLEGATIONS MADE ABOUT YOUR BROTHERS, AND I STILL AGREE WITH THEM, OTHERWISE I WOULDN'T HAVE FOUND AS I DID. THE COURT OF APPEAL MAY FEEL DIFFERENTLY, AND THIS IS THEIR PREROGATIVE.

MS. HADJI-ELIAS: I'M TALKING ABOUT THE RESTRAINING ORDER.

THE COURT: ANYTHING ELSE THAT IS DIFFERENT THAN FROM WHAT I ORIGINALLY ORDERED?

MS. HADJI-ELIAS: YES, YOUR HONOR. THAT I GO OUT ANYWHERE THEY ARE IN. LIKE – I WOULD LIKE TO ASK YOUR HONOR IF THERE IS A FUNERAL OR WEDDING –

THE COURT: IS THIS DIFFERENT FROM THE LANGUAGE OF THE ORIGINAL ORDER?

MS. HADJI-ELIAS: YES, IT IS VERY DIFFERENT.

THE COURT: I'M GOING TO STAY WITH THE ORIGINAL ORDER. ANYTHING ELSE?

MS. HADJI-ELIAS: IT SAYS HERE THAT WHEREVER I SEE THEM I SHOULD GET OUT. WHAT IF MY COUSIN GETS MARRIED? WHAT DO I DO? I TELL THEM TO GET MARRIED AGAIN? I MEAN THIS [p. 18] HASN'T HAPPENED, BUT IT MAY HAPPEN. WHAT DO I DO?

THE COURT: THE LANGUAGE WILL REMAIN AS IT WAS IN THE ORIGINAL ORDER, AND IF I RECALL CORRECTLY AT THE TIME OF TRIAL I TOLD YOU THAT I MEANT EXACTLY WHAT I SAID.

MS. HADJI-ELIAS: OKAY. I ASK YOU –

THE COURT: IF THEY ARE THERE, YOU ARE NOT THERE. THAT MEANS YOU LEAVE. NOT THEM. WHAT'S THE NEXT POINT?

MS. HADJI-ELIAS: IF IT IS FUNERAL OR – WHAT DO I DO?

THE COURT: YOU GO HOME. YOU LEAVE.

MS. HADJI-ELIAS: I'M NOT –

THE COURT: YOU LEAVE. ANYTHING ELSE?

MS. HADJI-ELIAS: I DON'T HAVE MY CIVIL RIGHT TO ATTEND A PUBLIC ANYTHING?

THE COURT: ANYTHING ELSE?

MS. HADJI-ELIAS: AS YOU SAID, YOUR HONOR, ANYTHING ELSE THAT SHE ADDED WE OBJECT TO , AND –

THE COURT: FINE. ALL RIGHT.

MS. HADJI-ELIAS: THE COST –

THE COURT: ANYTHING MORE?

MS. HADJI-ELIAS: I WOULD LIKE TO ASK BECAUSE MY TWO BROTHERS ARE OUT, THEIR COSTS GOES WITH THEM, NO?

THE COURT: I DIDN'T SEE ANY ORDER FROM THE COURT OF APPEAL ABOUT ANY CHANGE AS TO COSTS.

DID THEY MAKE ANY SUCH PROVISION?

MS. PINTAR: I DIDN'T SEE ANYTHING.

MS. HADJI-ELIAS: ALSO COULD WE MOVE FOR A JNOV, YOUR HONOR, BEFORE YOUR COURT?

[p. 19] MR. SMITH: EXCUSE ME, YOUR HONOR. ON THE ISSUE OF THE COSTS; TO THE EXTENT THAT THE JUDGMENT WAS REVERSED AS TO THE BROTHERS, THERE WOULD BE NO JUDGMENT FOR COSTS AGAINST THEM.

THE COURT: IT WOULD STAND TO REASON; HOWEVER, THE COURT OF APPEAL DID NOT SAY ANYTHING. THE COURT OF APPEAL CAN SAY ALL SIDES ARE TO BEAR THEIR OWN COSTS ON APPEAL OR THEY ARE NOT. THAT IS ONE LEVEL OF COST ISSUES.

AND THE SECOND LEVEL IS WHEN THEY ARE DIRECTING THE TRIAL JUDGES TO WHAT THEY ARE TO DO WITH THEIR JUDGMENT. THEY USUALLY SAY YOU ARE TO DO THIS. YOU ARE TO DO THIS.

THEY TOLD ME SOMETHING I WAS SPECIFICALLY TO DO, TO ENTER A JUDGMENT IN THEIR FAVOR. IT SAID NOTHING ABOUT ALTERING THE COST AWARD. I HAVE NO QUARREL WITH WHAT YOU ARE SAYING AS A GENERAL PRINCIPAL, BUT I HAVE TO BE GOVERNED BY WHAT THE COURT OF APPEAL TELLS ME TO DO. THEY DID NOT TELL ME TO DO IT. YOU ALSO DID NOT ASK THEM TO MAKE A CORRECTION JUST AS MISS PINTAR FAILED TO ASK THEM TO MAKE A CORRECTION, AND SO I'VE BEEN LEFT WITH THOSE LIMITED SPECIFIC INSTRUCTIONS.

MR. SMITH: YOUR HONOR, IN LOOKING AT THE JUDGMENT, THE JUDGMENT ONLY DOES ASK FOR COSTS AGAINST FARNAZ ELIAS AND SHARAM ELIAS.

THE COURT: AS DRAFTED BY MISS PINTAR?

MR. SMITH: YES.

THE COURT: THAT WAS GOING TO BE MY NEXT QUESTION, THAT ALL SHE IS SEEKING TO RECOVER COSTS FOR. BUT DID SHE PROVIDE IN HERE THAT THEY WERE TO RECOVER COSTS AGAINST HER [p. 20] CLIENT?

MR. SMITH: I BELIEVE THE COURT OF APPEAL DECIDED THAT EACH PARTY BEAR THEIR OWN COSTS.

MS. PINTAR: THE APPELLATE COST, NOT THE COST OF THE TRIAL.

THE COURT: THAT IS WHAT I'M SAYING. I THINK SHE IS ASKING ME ABOUT TRIAL COST. AND IF YOU ARE ASKING ME THAT SHE MAKE AN ORDER THAT HER CLIENTS PAY THE TRIAL COSTS FROM THE BROTHERS, I AM SAYING I HAVE NO INSTRUCTION FROM THE COURT OF APPEAL TO DO SO.

DID MISS PINTAR TELL ME TO DO SO IN THIS JUDGMENT?

MS. PINTAR: NO.

THE COURT: ALL RIGHT. SO I'M SAYING AS A GENERAL PRINCIPAL I WOULD BE IN ACCORD WITH YOUR THINKING ON THAT POINT, BUT I AM RELUCTANT TO GO BEYOND WHAT THE COURT OF APPEAL HAS SPECIFICALLY TOLD ME TO DO. SAME THING IS TRUE WITH REGARD TO THE INJUNCTIVE QUESTION. MY SENSE OF THINGS WOULD BE TO SAY THE INJUNCTIONS MIGHT STILL LIE, BUT THEY DID NOT TELL ME TO MAKE ANY LEEWAY FOR THAT, SO I'M NOT INCLINED TO DO IT.

MS. PINTAR: THE INJUNCTIONS, BY THE WAY, WERE NOT EVEN A SUBJECT OF APPEAL. THEY WERE NOT A MATTER APPEALED ON BY THE DEFENDANTS.

THE COURT: THAT IS WHAT I ASSUMED WAS THAT THEY WERE NOT APPEALED, AND SO IN THEORY THEY SHOULD STILL LIE, AND THAT MIGHT BE WHY THEY DID NOT ORDER ANY COST AWARD FOR THE BROTHERS. MAYBE THEY WERE

ASSUMING THAT THEY WOULD STILL BE [p. 21] THERE, I DON'T KNOW. I'M JUST GOING TO FOLLOW EXACTLY WHAT THIS ORDER TELLS ME TO DO. NO MORE. NO LESS. IF YOU GUYS NEED CLARIFICATIONS AS TO THE BROTHERS, YOU TWO GO SEEK IT.

MR. SMITH: I UNDERSTAND WHAT THE COURT SAID PREVIOUSLY THAT WE CAN'T COME BACK TO THE COURT AND ASK FOR MODIFICATION OF INJUNCTION BASED ON A MOTION.

THE COURT: I THINK THAT IT WAS MY INTENTION TO RETAIN JURISDICTION TO DO THAT. I DON'T KNOW IF THIS ORDER PUTS IN IT THAT I DID RETAIN JURISDICTION. I DON'T KNOW IF THE ORIGINAL JUDGMENT USED THAT LANGUAGE, BUT I THOUGHT ON THE RECORD ORALLY, MY RECOLLECTION IS I VERY CLEARLY RETAINED JURISDICTION.

DO YOU RECALL, MISS PINTAR?

MS. PINTAR: YES, YOU DID RETAIN JURISDICTION, AND I DON'T KNOW IF IT IS ACTUALLY IN YOUR JUDGMENT OR –

THE COURT: I'LL MAKE SURE IT IS SPECIFIED IN HERE THAT THE COURT HAS RETAINED JURISDICTION OVER THAT.

MR. SMITH: THAT'S THE INJUNCTIVE RELIEF?

THE COURT: THAT'S RIGHT. ALL RIGHT. DOES THAT TAKE CARE OF EVERYTHING THEN?

MS. HADJI-ELIAS: YOUR HONOR, CAN WE MOVE FOR JNOV BASED ON OPENING BRIEF THAT HAS BEEN SENT TO YOU?

MR. SMITH: YOUR HONOR –

THE COURT: MISS HADJI-ELIAS, I'M AFRAID YOU COME UP WITH THINGS THAT ARE NOT PROVIDED FOR IN THE LAW. THERE IS NO MORE JNOV'S OR WHATEVER YOU CALL IT. THERE IS NO MORE NEW TRIALS. IT IS OVER. THE APPEAL IS OVER. IT IS FINISHED.

MR. SMITH: ONE LAST POINT FOR CLARIFICATION, THE [p. 22] COURT OF APPEALS DID SAY THAT THE ENTIRE JUDGMENT AS THE BROTHERS IS REVERSED, AND I THINK THAT THE ENTIRE JUDGMENT WILL ENCOMPASS THE INJUNCTIVE RELIEF.

THE COURT: THEY DON'T ACT ON ANYTHING OTHER THAN WHAT IS BEFORE THEM ON APPEAL, BUT I DON'T THINK THEY SAID THAT. THEY SAID TO ENTER A JUDGMENT FOR THE BROTHERS. IT SAYS ENTER JUDGMENT IN THEIR FAVOR.

MS. PINTAR: ACTUALLY, YOUR HONOR, I THINK THEY DID SAY THAT THE ENTIRE JUDGMENT IS REVERSED.

THE COURT: IT SAYS ENTER JUDGMENT IN THEIR FAVOR. YOU THINK THEY USED THE WORDS "ENTIRE JUDGMENT"? THEY SAID, WE FIND WE HAVE ALREADY DETERMINED SHARAM AND

SHAHAB HAVE NO LIABILITY FOR ANY COMPENSATORY DAMAGES. THEN THEY SAY NO PUNITIVE DAMAGES. THAT IS PAGE 19.

MR. SMITH: YEAH. IF YOU LOOK AT, YOUR HONOR, PAGE 22 IT SAYS, THE JUDGMENT AGAINST SHARAM HADJI-ELIAS AND JUDGMENT AGAINST SHAHAB HADJI-ELIAS WERE REVERSED IN THEIR ENTIRETY.

THE COURT: WELL, I'M ASSUMING THAT THAT IS WHAT THEY WERE DOING, THAT'S WHY I'M NOT PUTTING INJUNCTIVE RELIEF IN HERE. SHE SAID, NO, I SHOULD STILL HAVE INJUNCTIVE RELIEF IN HERE. AND I SAID, NO. I'M ASSUMING THAT IS WHAT THEY ARE DOING EVEN THOUGH THEY NEVER DISCUSS THESE THINGS IN THEIR OPINION, EVEN THOUGH THEY NEVER SAID ANYTHING ABOUT IT, WHAT SPECIFICS. THEY ONLY TALKED ABOUT REVERSING COMPENSATORY THINGS EARLIER. I'M ASSUMING THAT. SO I SAID I'M NOT PUTTING IT IN THE JUDGMENT. BUT BY THE SAME TOKEN, THEY DID NOT SAY THE TRIAL COURT IS DIRECTED TO ENTER JUDGMENT IN THEIR FAVOR AND AWARD THEM COSTS.

[p. 23] MR. SMITH: I AM NOT REFERRING TO COSTS RIGHT NOW.

THE COURT: I'M SIMPLY SAYING I'M GOING TO DO EXACTLY WHAT THEY TOLD ME TO DO. NOTHING MORE. NOTHING LESS. AND SHE THINKS THE INJUNCTIVE RELIEF SHOULD NOT HAVE BEEN INCLUDED. SHE SHOULD ASK THE APPELLATE

COURT TO CLARIFY THAT AND GET IT STRAIGHTENED OUT.

IF YOU THINK COSTS SHOULD BE INCLUDED, GO ON UP AND ASK THEM TO CLARIFY THAT THE COURT SHOULD NOT ONLY ENTER JUDGMENT IN FAVOR BUT ALSO INCLUDE A COST AWARD.

MR. SMITH: JUST SO I'M CLEAR WITH REGARD TO THE INJUNCTIVE RELIEF BECAUSE MAYBE I MISHEARD WHAT YOU SAID –

THE COURT: IT IS NOT GOING TO BE IN THIS JUDGMENT AGAINST THE BROTHERS FOR THE SIXTH TIME.

MR. SMITH: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. THAT TAKES CARE OF IT I GUESS. I WILL TRY TO GET THIS OUT TO YOU JUST IN THE NEXT COUPLE OF DAYS, AND THAT'S THAT.

MS. PINTAR: MAY I HAVE THE CONSENT TO REDUCTION BACK FOR MY FILE?

THE COURT: MAY WE COPY THIS TO PUT IT IN THE COURT FILE?

MS. PINTAR: SURE.

THE COURT: I'M NOT SURE WHICH OF THESE OTHERS WERE ALSO YOURS.

MS. PINTAR: I THINK JUST –

THE COURT: I THINK YOU GAVE US YOUR COPY OF THIS OTHER DOCUMENT.

MS. PINTAR: NO. ACTUALLY I DON'T THINK SO. I JUST [p. 24] GAVE YOU AS FAR AS I KNOW THAT ONE THING JUST NOW. I DON'T KNOW.

THE COURT: THIS SAYS –

MS. PINTAR: WHAT IS THAT?

THE COURT: – "LAURIE, PLEASE PUT THE ADDRESS ON OF JUDGE MEIERS ON THIS FORM AND SEND IT."

MS. PINTAR: LAURIE, WE DON'T HAVE ANYBODY NAMED LAURIE IN MY OFFICE.

THE COURT: THIS MUST HAVE COME FROM SANTA MONICA. THEY MUST HAVE MAILED THIS TO US SEPARATELY. ALL RIGHT.

CAN WE MAKE A COPY OF THIS, MISS BAKER, AND THEN GIVE THIS ORIGINAL BACK TO MISS PINTAR?

ALL RIGHT. NOW, THAT SHOULD TAKE CARE OF ALL OF THE APPELLATE PROCESSES UNLESS EITHER OF YOU DECIDE TO RUN UP AND GET CLARIFICATIONS. IF NOT, THIS IS IT.

MS. PINTAR: I'M SATISFIED WITH WHAT YOU –

THE COURT: I JUST WANT TO GET MR. SMITH'S REPRESENTATION SITUATION CLEAR ON THE RECORD FOR HIM AND FOR THE COURT. SOMETIMES ATTORNEYS ARE RETAINED TO REPRESENT PEOPLE FOR TRIAL, AND THAT ATTORNEY HAS NO INTENTION OF HANDLING ANY APPEALS AND

THEIR AGREEMENT DOES NOT EXTEND TO APPEALS.

SOMETIMES, THEN, THEY GET ANOTHER ATTORNEY, THEN, TO REPRESENT THEM IN CONNECTION WITH APPELLATE MATTERS, BUT ONCE THE APPEALS ARE OVER THAT ATTORNEY'S REPRESENTATION ENDS. FOR EXAMPLE, IF THERE IS A NEW TRIAL, THEY ARE NOT EXPECTED TO DO THE RETRIAL. IT IS NOT A PART OF THEIR AGREEMENT. IT IS NOT A PART OF WHAT THEY ARE SUPPOSED TO [p. 25] DO.

NOW, I ASSUME MR. SMITH WILL REVIEW THIS JUDGMENT ON THE REMITTITUR WHEN IT COMES OUT BECAUSE THAT KIND OF WINDS UP THE APPELLATE PROCESS UNLESS HE IS SUBSTITUTED OUT OF THE CASE BEFORE THAT TIME BY HIS CLIENTS THROUGH THE USUAL PROCESSES OR BY ORDER OF THE COURT.

BUT THEREAFTER, I ASSUME, MR. SMITH, THAT THAT'S YOUR REPRESENTATION, IS IN CONNECTION WITH THE VARIOUS APPEALS AND WRITS THAT WERE TAKEN IN THE CASE.

MR. SMITH: THAT'S CORRECT, YOUR HONOR.

THE COURT: APPELLATE LEVEL REPRESENTATION.

MR. SMITH: THAT'S CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT. AND EVEN I DON'T KNOW IF YOU HAVE A WRITTEN CONTRACT

THAT WOULD SPELL OUT THAT THAT'S THE LIMIT OF THE REPRESENTATION.

MR. SMITH: YES, YOUR HONOR.

THE COURT: ALL RIGHT. SO I WANT YOUR CLIENTS TO BE CLEAR AND UNDERSTAND THAT IF ANYTHING GOES BEYOND THESE MATTERS THAT I HAVE TALKED ABOUT, THEY NEED TO TALK TO YOU ABOUT EXTENDING THAT REPRESENTATION, OTHERWISE THE COURT WILL NOT BE EXPECTING YOU TO BE INVOLVED WITH ANY OTHER TYPES OF PROCEDURES.

MR. SMITH: THAT'S FINE, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. SMITH: YES.

THE COURT: WE HAD SOME CONFUSION TODAY, AND I WANTED TO MAKE SURE WE HAD TAKEN CARE OF THAT. AND YOU MIGHT WANT TO SPELL THIS OUT TO YOUR CLIENTS WELL SO THAT THEY FULLY [p. 26] UNDERSTAND IT AND CAN ARRANGE FOR REPRESENTATION SHOULD WE BE DOING ANYTHING IN YOUR – I DON'T UNDERSTAND THESE THINGS. I DON'T SEE HOW WE WOULD BE, BUT IF WE WERE, I DON'T WANT TO SEE MISS PINTAR DOWN HERE CERTAINLY COOLING HER HEELS FOR TWO HOURS IN THE MORNING.

MR. SMITH: I APOLOGIZE TO THE COURT FOR THIS MORNING.

THE COURT: WELL, IT DIDN'T CAUSE ME SO MUCH DIFFICULTY AS IT DID MISS PINTAR.

MR. SMITH: I ALSO APOLOGIZED TO MISS PINTAR.

THE COURT: THANK YOU.

[p. 27]

MUNICIPAL COURT OF LOS ANGELES
JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

THE HASSAN SHAHBAZ, ET AL.,	)	
PLAINTIFFS,	)	
VS.	)	NO. WEC142752
FARNAZ HADJI-ELIAS, ET AL.,	)	
DEFENDANTS.	)	

I HEREBY CERTIFY THAT I AM AN OFFICIAL SHORTHAND REPORTER OF THE ABOVE-ENTITLED COURT; THAT I DID CORRECTLY REPORT THE PROCEEDINGS CONTAINED HEREIN; AND THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPTION OF MY SAID NOTES AND A TRUE AND CORRECT STATEMENT OF SAID TESTIMONY AND PROCEEDINGS.

DATED THIS 18TH DAY OF AUGUST 1997.

/s/ Rosemarie P. Hernandez
ROSEMARIE P.
HERNANDEZ, CSR 9572
OFFICIAL REPORTER

DIVISION 28

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

Date: MAY 14, 1997

Honorable BARBARA A. MEIERS , Judge
, Deputy Sheriff
, C.S.L.

BETTINA M. BAKER , Deputy Clerk
, Reporter
, E/R Monitor

WEC 142752 (Parties and Counsel checked if present)

SHAHBAZ

VS

HADJI-ELIAS

Counsel for
Plaintiff
NO
APPEARANCE

Counsel for
Defendant
NO
APPEARANCE

NATURE OF PROCEEDINGS:

JUDGMENT EFFECTIVE NUNC PRO TUNC TO JUNE 7, 1994, IS SIGNED THIS DATE AND A COPY IS MAILED TO THE FOLLOWING:

MARC SMITH, ESQ.
KRANE & SMITH
16255 VENTURA BLVD.
SUITE 600
ENCINO CA 91436-2302

SUSAN K PINTAR
LAW OFFICES OF HAROLD GREENBERG
2263 S HARVARD BLVD
SUITE B
LOS ANGELES CA 90018-2143

Minutes Entered: May 14, 1997

Hon. Barbara A. Meiers
(sitting by designation)
Superior Court of California
110 N. Grand Avenue
Los Angeles, California 90012
(213) 974-6249

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HASSAN SHAHBAZ aka HASSAN SHAHBAZIAN and GUITY SHAHBAZ ELLIS aka GUITY ELLIS Plaintiffs, vs. FARNAZ HADJI-ELIAS aka FARNAZ ELIAS aka FARNAZ ELYAS aka FARNAZ HADJI ELYAS; ASHRAF HADJI-ELIAS aka ASHRAF ELYAS aka ASHRAF MOUSSAI aka ASHRAF HADJI ELYAS; SHAHAB HADJI-ELIAS aka SHAHAB ELIAS aka SHAHAB ELYAS aka SHAHAB HADJI ELYAS; SHAHRAM HADJI-ELIAS aka SHAHRAM ELIAS aka SHAHRAM ELYAS aka SHAHRAM HADJI ELYAS Defendants.	CASE NO. WEC142752 JUDGMENT EFFECTIVE *NUNC PRO TUNC* TO JUNE 7, 1994 (Filed May 14, 1997)

FARNAZ HADJI-ELIAS aka FARNAZ ELIAS aka FARNAZ ELYAS aka FARNAZ HADJI ELYAS

Cross-Complainant,

vs.

HASSAN SHAHBAZ aka HASSAN SHAHBAZIAN and GUITY SHAHBAZ ELLIS aka GUITY ELLIS

Cross-Defendants.

A judgment against FARNAZ HADJI-ELIAS aka FARNAZ ELIAS aka FARNAZ ELYAS aka FARNAZ HADJI ELYAS; ASHRAF HADJI-ELIAS aka ASHRAF ELYAS aka ASHRAF MOUSSAI aka ASHRAF HADJI ELYAS; SHAHAB HADJI-ELIAS aka SHAHAB ELIAS aka SHAHAB ELYAS aka SHAHAB HADJI ELYAS; SHAHRAM HADJI-ELIAS aka SHAHRAM ELIAS aka SHAHRAM ELYAS aka SHAHRAM HADJI ELYAS and in favor of HASSAN SHAHBAZ aka HASSAN SHAHBAZIAN and GUITY SHAHBAZ ELLIS aka GUITY ELLIS having been issued on June 7, 1994, and the Court of Appeal for the Second Appellate District on December 12, 1996, having reversed that judgment in part and having sustained it in part, this Court now renders a newly corrected and modified judgment as follows, which present judgment totally supersedes and takes the place, *nunc pro tunc* as of June 7, 1994, of that earlier June 7, 1994 judgment.[1]

[1] The Court further finds, in keeping with that December 12, 1996 Court of Appeal decision, that this present judgment is

IT IS ADJUDGED, ORDERED AND DECREED as follows:

1. Plaintiff HASSAN SHAHBAZ aka HASSAN SHAHBAZIAN is to recover compensatory damages in the sum of $200,000.00 from the defendants FARNAZ HADJI-ELIAS aka FARNAZ ELIAS aka FARNAZ ELYAS aka FARNAZ HADJI ELYAS; and ASHRAF HADJI-ELIAS aka ASHRAF ELYAS aka ASHRAF MOUSSAI aka ASHRAF HADJI ELYAS, for which they are jointly and severally liable.

2. Plaintiff HASSAN SHAHBAZ aka HASSAN SHAHBAZIAN is to recover punitive damages from FARNAZ HADJI-ELIAS aka FARNAZ ELIAS aka FARNAZ ELYAS aka FARNAZ HADJI ELYAS in the sum of $50,000.00

3. Plaintiff HASSAN SHAHBAZ aka HASSAN SHAHBAZIAN is to recover punitive damages from ASHRAF HADJI-ELIAS aka ASHRAF ELYAS aka ASHRAF MOUSSAI aka ASHRAF HADJI ELYAS in the sum of $18,000.00.

4. Plaintiff GUITY SHAHBAZ ELLIS aka GUITY ELLIS is to recover compensatory damages in the sum of $6,700.00 from Defendant FARNAZ HADJI-ELIAS aka FARNAZ ELIAS aka FARNAZ ELYAS aka FARNAZ HADJI ELYAS.

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rendered only as to, and adjudicates only, acts committed by any and all of the defendants named in the complaint and alleged in the complaint up to December 18, 1989, leaving all subsequent acts not adjudicated within this judgment.

5. Plaintiff GUITY SHAHBAZ ELLIS aka GUITY ELLIS is to recover punitive damages in the amount of $7,500.00 from Defendant FARNAZ HADJI-ELIAS aka FARNAZ ELIAS aka FARNAZ ELYAS aka FARNAZ HADJI ELYAS.

IT IS FURTHER ADJUDGED, ORDERED AND DECREED:

6. That FARNAZ HADJI-ELIAS aka FARNAZ ELIAS aka FARNAZ ELYAS aka FARNAZ HADJI ELYAS and ASHRAF HADJI-ELIAS aka ASHRAF ELYAS aka ASHRAF MOUSSAI aka ASHRAF HADJI ELYAS shall not alarm, annoy or harass HASSAN SHAHBAZ aka HASSAN SHAHBAZ aka HASSAN SHABAZIAN ("MR. SHAHBAZ") or GUITY SHAHBAZ ELLIS aka GUITY ELLIS ("MRS. ELLIS") or the following family members of MR. SHAHBAZ: Fred Shahbazian, Sholeh Shahbaz; and of MRS. ELLIS: Terry, Dustin and Deren Ellis; and specifically:

a. Shall not threaten, strike or make physical contact with MR. SHAHBAZ or MRS. ELLIS or the following family members of MR. SHAHBAZ: Fred Shahbazian, Sholeh Shahbaz; and of MRS. ELLIS: Terry, Dustin and Deren Ellis, and/or disturb their peace in any way, including by publicly yelling or directing any other forms of verbal abuse to or at any of them.

b. Shall not keep MR. SHAHBAZ or MRS. ELLIS under surveillance, or the following family members of MR. SHAHBAZ: Fred Shahbazian, Sholeh Shahbaz; and of MRS. ELLIS: Terry, Dustin and Deren Ellis;

c. Shall not follow MR. SHAHBAZ or MRS. ELLIS or the following family members of MR. SHAHBAZ: Fred Shahbazian, Sholeh Shahbaz; and of MRS. ELLIS: Terry, Dustin and Deren Ellis;

d. Shall not telephone the residence and place of work and/or schools of MR. SHAHBAZ or MRS. ELLIS or the following family members of MR. SHAHBAZ: Fred Shahbazian, Sholeh Shahbaz; and of MRS. ELLIS: Terry, Dustin and Deren Ellis or place any phone calls to any of them wherever they may be;

e. Shall not block the movements of MR. SHAHBAZ or MRS. ELLIS in public places or thoroughfares or of the following family members of MR. SHAHBAZ: Fred Shahbazian, Sholeh Shahbaz; and of MRS. ELLIS: Terry, Dustin and Deren Ellis;

7. That FARNAZ HADJI-ELIAS aka FARNAZ ELIAS aka FARNAZ ELYAS aka FARNAZ HADJI ELYAS and ASHRAF HADJI-ELIAS aka ASHRAF ELYAS aka ASHRAF MOUSSAI aka ASHRAF HADJI ELYAS shall stay at least 300 yards away from the following persons and places:

a. MR. SHAHBAZ and MRS. ELLIS and the following family members of MR. SHAHBAZ: Fred Shahbazian, Sholeh Shahbaz, and of MRS. ELLIS: Terry, Dustin and Deren Ellis;

b. Plaintiffs' present and future residences: MR. SHAHBAZ, presently at 10717 Wilshire Boulevard, Los Angeles, California 90024 (except that the defendants are not precluded from driving down Wilshire Boulevard);

MRS. ELLIS, presently at 6961 Jamieson, Reseda, California 91335.

c. MR. SHAHBAZ' and MRS. ELLIS' places of work;

d. The school and/or place of work of family members Fred Shahbazian, Sholeh Shahbaz and Terry, Dustin and Deren Ellis;

e. All business and personal engagements attended by MR. SHAHBAZ and MRS. ELLIS (if Defendants are at any engagement and either Mr. Shabaz or Mrs. Ellis appears, the Defendants must leave immediately and/or if Mr. Shabaz or Mrs. Ellis are already at a location and the defendants arrive, the defendants must leave immediately).

8. All orders in paragraphs 6 through 7 hereof (and all subparts of paragraphs 6 and 7 which constitute an Injunction Prohibiting Harassment ("Injunction")) shall be effective until further order of the Court beginning June 7, 1994, and the Court specifically retains jurisdiction to grant such further relief as may be necessary to implement those orders, to punish the violation thereof, and to modify them as necessary in the interests of justice to insure full relief to plaintiffs and fairness to the defendants.

9. This Injunction may be given to any law enforcement agency.

10. This injunction is effective when made and as of June 7, 1994. Law enforcement agencies are permitted to enforce the Injunction to the extent required and in whatever manner is authorized to them to do so pursuant to the law.

11. Plaintiffs are to recover nothing from and receive no relief as to Defendants SHAHAB HADJI-ELIAS, aka SHAHAB ELIAS aka SHAHAB ELYAS aka SHAHAB HADJI-ELYAS and SHAHRAM HADJI-ELIAS aka SHAHRAM ELIAS aka SHAHRAM ELYAS aka SHAHRAM HADJI ELYAS.

12. Costs are awarded to both plaintiffs against FARNAZ HADJI-ELIAS aka FARNAZ ELIAS aka FARNAZ HADJI ELYAS and ASHRAF HADJI ELYAS aka ASHRAF ELYAS aka ASHRAF MOUSSAI aka ASHRAF HADJI ELYAS jointly and severally as authorized by law and in the amount previously set on Plaintiffs' earlier cost bill.

Dated: May 14, 1997

Hon. /s/ Barbara Meiers
BARBARA A. MEIERS
Judge of the Superior Court
(sitting by designation)

IN THE MUNICIPAL COURT OF THE
LOS ANGELES JUDICIAL DISTRICT

SITTING AS A SUPERIOR COURT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

DIVISION 28

HON. BARBARA A. MEIERS
(SITTING AS SUPERIOR COURT JUDGE)

HASSAN SHAHBAZ AKA HASSAN SHAHBAZIAN, AND GUITY SHAHBAZ ELLIS AKA GUITY ELLIS,	)	NO. WEC142752
PLAINTIFFS,	)	
VS.	)	
FARNANZ HADJI-ELIAS AKA FARNAZ ELIAS AKA FARNAZ ELYAS AKA FARNAZ HADJI ELYAS, ET AL.,	)	
DEFENDANTS.	)	

REPORTER'S TRANSCRIPT

MONDAY, SEPTEMBER 22, 1997

APPEARANCES:

FOR THE PLAINTIFFS:
LAW OFFICES OF HAROLD GREENBERG
BY: SUSAN K. PINTAR
ATTORNEY AT LAW
2263 SOUTH HARVARD BOULEVARD
LOS ANGELES, CALIFORNIA 90018

FOR THE DEFENDANTS:
IN PROPRIA PERSONA

ORIGINAL AVEROL E. DAVIS, CSR, #4294
OFFICIAL COURT REPORTER

[p. 2] LOS ANGELES, CALIFORNIA; MONDAY, SEPTEMBER 22, 1997

9:28 A.M.

DIVISION 28

HON. BARBARA A. MEIERS
(SITTING AS SUPERIOR COURT JUDGE)

APPEARANCES:

THE DEFENDANTS, FARNANZ HADJI-ELIAS AND ASHRAF HADJI-ELIAS, IN PROPRIA PERSONA; SUSAN K. PINTAR, ATTORNEY AT LAW, REPRESENTING THE PLAINTIFFS, HASSAN SHAHBAZ AND GUITY SHAHBAZ ELLIS. (AVEROL ELAINE DAVIS, CSR #4294, OFFICIAL REPORTER)

THE COURT: ALL RIGHT. THIS IS SHAHBAZ, ET AL., VERSUS HADJI-ELIAS, SUPERIOR COURT CASE WEC142752.

IS YOUR PLAINTIFF'S COUNSEL HERE?

AN AUDIENCE MEMBER: SHE STEPPED OUT.

THE COURT: RIGHT.

DEPUTY JACOBS, WOULD YOU SEE IF YOU CAN FIND PLAINTIFF'S COUNSEL. OTHERWISE, WE'LL PUT THIS OVER.

DO YOU KNOW WHERE YOUR COUNSEL WENT?

THE BAILIFF: SHE SAID SHE WAS GOING OUT TO USE THE TELEPHONE, BUT SHE'S NOT ON THE PHONE, SO . . .

THE COURT: SHE SAID SHE WAS GOING TO USE THE PHONE, BUT SHE'S NOT AT THE PHONE?

THE BAILIFF: SHE'S NOT AT THE PHONE.

THE COURT: ALL RIGHT. PUT THIS ASIDE. EVERYBODY WILL HAVE TO GO BACK TO THEIR SEATS.

(A RECESS WAS TAKEN UNTIL 9:38 A.M.)

THE COURT: ALL RIGHT. LET'S GO BACK TO THAT.

[p. 3] THIS IS THE SHAHBAZ VERSUS HADJI-ELIAS MATTER, SUPERIOR COURT CASE NUMBER WEC142752.

MS. PINTAR: GOOD MORNING.

MS. HADJI-ELIAS: GOOD MORNING, YOUR HONOR. FARNANZ HADJI-ELIAS, DEFENDANT, AND ASHRAF HADJI-ELIAS, DEFENDANT, APPEARING TODAY.

MS. PINTAR: SUSAN PINTAR FOR PLAINTIFF, AND MS. GUITY SHAHBAZ ELLIS IS PRESENT, ALSO.

THE COURT: ALL RIGHT. I DON'T KNOW IF A SUBSTITUTION OF COUNSEL HAS EVER BEEN FILED HERE TO SUBSTITUTE IN MS. HADJI-ELIAS AND ASHRAF HADJI-ELIAS.

BUT REGARDLESS, THIS COURT HAS ABSOLUTELY NO JURISDICTION TO DEAL WITH THE MATTERS RAISED IN THESE PAPERS. IT IS OFF CALENDAR. IT IS NOT BEING CONSIDERED. IT IS NOT BEING RULED UPON ON ITS MERITS. THIS COURT HAS NO JURISDICTION.

THE APPEAL IS OVER. THE CASE IS OVER. I HAVE RETAINED JURISDICTION OVER ONE THING, AND ONE THING ONLY, AND THAT IS THE INJUNCTION THAT I ISSUED AND WHETHER OR NOT IT IS BEING COMPLIED WITH, AND I WILL ENTERTAIN MOTIONS IF IT IS NOT BEING COMPLIED WITH FOR CONTEMPT OR WHATEVER ELSE MAY BE AT ISSUE.

SO THERE IS NO NEED FOR ORAL ARGUMENT OR ANYTHING ELSE ON THIS MATTER. THIS COURT HAS NO POWER TO ENTERTAIN THESE MOTIONS.

MS. HAJI-ELIAS: BUT YOUR HONOR SAID –

THE COURT: THAT'S IT.

MS. HADJI-ELIAS: I AM SERVING MY ANSWER ANYWAY.

[p. 4] THE COURT: THAT'S IT. YOU'RE NOT SERVING OR FILING ANYTHING, MA'AM. THAT'S IT.

MS. HADJI-ELIAS: THE REPLY TO THE MEMORANDUM BY DEFENDANT.

THE COURT: MS. PINTAR, GIVE IT BACK TO HER.

GOODBYE. GET AN ATTORNEY WHO KNOWS THE LAW. PLEASE DO NO FILE MORE FRIVOLOUS PRO PER MOTIONS.

MS. HADJI-ELIAS: THIS IS NOT FRIVOLOUS, YOUR HONOR.

THE COURT: THAT'S IT.

DEPUTY, WOULD YOU PLEASE SHOW THEM OUT.

MS. HADJI-ELIAS: YOUR HONOR SAID IN THE TRANSCRIPT –

THE COURT: ALL RIGHT. LET'S HAVE THE NEXT CASE, WHICH IS –

MS. HADJI-ELIAS: – THAT THE JUDGMENT ISSUED SHOULD BE DISALLOWED IF IT WAS NOT PROPERLY FILED.

THE COURT: ONCE I SAID THEY WERE TO BE SHOWN OUT, THAT'S THE END.

(PROCEEDINGS WERE CONCLUDED AT 9:40 A.M.)

[p. 5] THE MUNICIPAL COURT OF THE
LOS ANGELES JUDICIAL DISTRICT

SITTING AS A SUPERIOR COURT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

DIVISION 28

HON. BARBARA A. MEIERS
(SITTING AS SUPERIOR COURT JUDGE)

HASSAN SHAHBAZ AKA HASSAN SHAHBAZIAN, AND GUITY SHAHBAZ ELLIS AKA GUITY ELLIS,	)	NO. WEC142752
PLAINTIFFS,	)	
VS.	)	
FARNANZ HADJI-ELIAS AKA FARNAZ ELIAS AKA FARNAZ ELYAS AKA FARNAZ HADJI ELYAS,	)	
DEFENDANT.	)	

STATE OF CALIFORNIA	)	
	)	SS.
COUNTY OF LOS ANGELES	)	

I HEREBY CERTIFY THAT I AM AN OFFICIAL TRANSCRIPT REPORTER OF THE ABOVE-ENTITLED COURT; THAT I DID CORRECTLY REPORT THE PROCEEDINGS CONTAINED HEREIN; AND THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPTION OF MY SAID NOTES TAKEN MONDAY, SEPTEMBER 22, 1997.

DATED THIS 29TH DAY OF SEPTEMBER 1997.

/s/ Averol Elaine Davis
AVEROL ELAINE DAVIS,
CSR NO. 4294
OFFICIAL REPORTER

IN THE SUPREME COURT OF CALIFORNIA

FARNAZ HADJI-ELIAS AND ASHRAF HADJI-ELIAS

Defendants, Appellants, and Petitioners

vs.

THE SUPERIOR COURT OF LOS ANGFLES COUNTY,

RESPONDENT.

HASSAN SHAHBAZ AND GUITY SHAHBAZ,

Real Parties in Interest.

Appeal From The Superior Court Of Los Angeles County,

The Honorable Barbara Meiers, Municipal Court Judge sitting as Superior Court Judge

Los Angeles Case No. WEC 142752

And Petition From The Court of Appeal, 2d Civil No. B116045

Second Appellate District

PETITION FOR REVIEW, TO SET ASIDE THE ENTIRE JUDGMENT ENTERED BY MISTAKE, AND GRANT A NEW TRIAL; MEMORANDUM OF POINTS AND AUTHORITIES

(Filed Oct. 16, 1997)

Defendants, Appellants and Petitioners,
FARNAZ HADJI-ELIAS and ASHRAF HADJI-ELIAS
1746 Ensley Avenue
Los Angeles, California 90024
Telephone: (310) 553-5859

TABLE OF AUTHORITIES

Cases

City of El Monte v. Superior Court (Bullen) (1994) 29 Cal.App.4th 272, 276-277, 34 Cal Rptr.2d 490 .....

Goshgarian v. George (1985) 161 Cal.App.3d 1214, 1230-1231.....

Medo v. Superior Court (1988) 205 Cal.Ap.3d 64, 68-69, 251 Cal.Rptr. 924.....

Michelson v. Hamada (1994) 29 Cal.App.4th 566, 1596 .....

Rich v. Smith (1915) 26 Cal.App.775, 148 P. 545.....

Rivera v. Sassoon (1995) 39 Cal.App.4th 1045, 1048; 46 Cal.Rptr.2d 144.....

Rosener v. Sears Roebuck & Co. (1980) 110 Cal.Ap.3d 740, 757.....

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COURT OF APPEAL'S ORDER DENYING WRIT OF MANDATE ON OCTOBER 8, 1997, PRESENTED AS EXHIBITS 2 pages.

This is a Petition from an Opinion which destroys the life of a woman (**FARNAZ**), and her elderly mother (**ASHRAF**). For the reasons set forth below, Appellants/Defendants/Petitioners respectfully ask that this Court set aside the entire judgment and grant a New Trial.

I. STATEMENT OF THE CASE

Defendants/Appellants FARNAZ HADJI-ELIAS ("**FARNAZ**") and ASHRAF HADJI-ELIAS ("**ASHRAF**") hereby petition this court **to set aside the entire judgment and grant a New Trial** based on the portions of the Appellate Court's Opinion of December 12, 1996: (1) conditionally allowing punitive damages against **FARNAZ** in the sum of $57,000; (2) alternatively granting Respondents a new trial against **FARNAZ** on the issue of punitive damages **only**; and, (3) erroneous compensatory damages against **ASHRAF**.

First, the basis for this Petition is that there is no evidence of any net worth of **FARNAZ** upon which to predicate a punitive damage award, pursuant to C.C. §3295(d) any retrial must be as to the entire case and

cannot be as to punitive damages only. Furthermore, the entire compensatory and punitive damage awards against **ASHRAF** and **FARNAZ** are erroneous and unsupported by **any** substantial evidence; thus, should be set aside and a New Trial be granted.

Secondly and most obviously, the **filing of the Consent to the Remittitur was untimely** and caused prejudice to both Defendants/Appellants as their ***Petition for Rehearing*** was denied. **The Court should have held the Consent until after the final determination of the Appeal and should not have filed it prematurely.** As a result, the entire judgment should be set aside, and a New Trial should be granted, on all causes, for both Defendants/Appellants.

II. THE $57,000 CONDITIONAL PUNITIVE DAMAGE AWARDS AGAINST FARNAZ ARE IMPROVER ERRONEOUS AND UNCONSTITUTIONAL SINCE THERE IS NO EVIDENCE OF NET WORTH.

Here, this Appellate Court found that the only basis for punitive damages against **FARNAZ** was her assumed "partial interest" in the Santa Monica house. (Opinion, p.20). The Court then reasoned that since the Santa Monica house was valued at $370,000 to $400,000 and the compensatory damage award was $206,700, **FARNAZ'** worth would be "at most $61,666." (Opinion, p.21.) Such analysis, however, was in the context and for the purpose of finding that the "punitive damage awards against her, totalling $342,000 are far in excess of her net worth." (Id.)

There is no evidence in the record that **FARNAZ** owned more than a proportional interest in the Santa Monica house – approximately 16.66%.[1] To conclude or infer that **FARNAZ** owned more than 16.66% would be sheer speculation. A deed conveying property to two or more grantees, without designating the portions conveyed to each, presumptively conveys to each an undivided proportional interest. *Rich v. Smith* (1915) 26 Cal.App. 775, 148 P. 545; *see also* C.C. §§ 685, 686.

Consequently, for punitive damage purposes, there is no evidence that the value of **FARNAZ'** partial interest was more than $61,666. Especially, after deducting the compensatory damage award (Opinion, p.22), her net worth is negative. Since a punitive damage award generally may not exceed 10% of a defendant's net worth (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1596), **FARNAZ'** net worth of less than zero precludes any punitive damage award against her.

Thus, even the reduced $57,000 punitive damage awards conditionally allowed against **FARNAZ** (Opinion, p.22), cannot stand, and the punitive damage awards against her must be reversed in their entirety.

III. RETRIAL ON THE ISSUE OF PUNITIVE DAMAGES ONLY, WOULD BE IMPROPER AND UNCONSTITUTIONAL.

An award of punitive damages must be rendered by the **same jury** that awarded compensatory damages in

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[1] The four deeds in Exhibits 45a and 45b reflect that Farnaz' proportional interest would be 16.66%.

favor of the plaintiff and that found oppression, fraud, or malice. Civil Code Section 3295(d) ("Evidence of profit and financial condition shall be presented to the same trier of fact that found for the plaintiff and found one or more Defendants guilty of malice, oppression or fraud.").

Subdivision (d) was added to Civil Code Section 3295, effective in 1988. The authorities cited by this Court at page 22 of its Opinion – *Rosener v. Sears Roebuck & Co.* (1980) 110 Cal.App.3d 740, 757 and *Goshgarian v. George* (1985) 161 Cal.App.3d 1214, 1230-1231 – predate the adding of subdivision.

The issue is whether the authority of an Appellate Court to order a new trial on the issue of the amount of punitive damages only survives Civil Code Section 3295(d). Defendants/Appellants/Petitioners respectfully submit that it does not. The statute clearly states that **the same jury** that determines the first phase of a trial bifurcated as to punitive damages **must decide the second phase.** *Rivera v. Sassoon* (1995) 39 Cal.App.4th 1045, 1048, 46 Cal.Rptr.2d 144 ("it is irreversible error to try the punitive damages issue to a new jury after the jury which found liability has been excused."; City of El Monte v. Superior Court (Bullen) (1994) 29 Cal.App.4th 272, 276-277, 34 Cal.Rptr.2d 490 ("Section 3295, subdivision (d). . . . leaves no room for the exercise of discretion unless the Defendant expressly or tacitly agrees otherwise"); *Medo v. Superior Court* (1988) 205 Cal.App.3d 64, 6869, 251 Cal.Rptr. 924 ("Section 3295 requires that compensatory and punitive damages be determined by the same jury").

Consequently, a retrial on the issue of punitive damages **only**, would be improper and violative of C.C. §3295(d). If there is to be a retrial as to punitive damages against **FARNAZ**, there must be a retrial on **all** issues as to her and her mother, **ASHRAF**.

IV. THE COMPENSATORY DAMAGE AWARD AGAINST ASHRAF IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Most interestingly, the **Court of Appeal agreed that the post-filing compensatory damages were caused by passion** and prejudice, **therefore** it is obvious that all other damages were affected by this **same** passion and prejudice and should have been reversed entirely.

In support of its conclusion that the verdict against **ASHRAF** in favor of Hassan for **pre-filing compensatory** damages in the outrageous sum of $200,000 is supported by substantial evidence, the Appellate Court cited several factors which are all false and **none exists in the record** as narrated by the Opinion.

There is no single evidence that **ASHRAF (or FARNAZ)** removed any item that belonged to Hassan; Guity never testified that **ASHRAF (or FARNAZ)** set foot on her property; and never caused distress to Hassan or Guity.

The **Opinion was incorrect** in many of its perceptions on **Fernaz** and **Ashraf**, about the actual evidence presented during trial, in addition to other legal aspects for which Defendants/Appellants petitioned for a

Rehearing, which was denied due to prejudice. Some of these misperceptions are as follows:

"First, there was evidence in the record that ASHRAF removed items from Hassan's apartment. She trespassed at Guity's home, and caused distress to Hassan and Guity. She was involved in the incident at the Amiri home, where she grabbed Guity to prevent her from entering the house." The Amiris had a party that night, and they are also friends of the Defendants. In addition, Guity never testified that **ASHRAF** grabbed her. As to **ASHRAF**'s liability to Hassan, this evidence is insufficient to suppport the jury's findings that **ASHRAF** is liable for any of the pre-filing compensatory damages. (Opinion, pp. 15-16.)

Most critical, only two of these so called "incidents" (which were really meetings among family members), involved Hassan. As to **ASHRAF** causing distress to Hassan, Defendants/Appellants respectfully suggest that there is no such evidence in the record. The sole role played by **ASHRAF** in any of these "incidents", was simply that she was **FARNAZ**' mother; therefore, present with her daughter, at different gatherings or family meetings. She was not hired like a stranger who was not supposed to be there, but a **mother** who happened to live with her daughter after the separation, therefore just being there, at times.

Finally, we are left with slight, contradictory, ambiguous evidence in the record that **ASHRAF** purportedly was present when **FARNAZ** was moving her own personal property from the apartment **FARNAZ** and Hassan

shared. Assuming arguendo that this is substantial evidence for purposes of liability, it is not sufficient to support the $200,000 damages award or any award. Such award against **ASHRAF** or **FARNAZ**, like the invalid awards against SHAHRAM and SHAHAB, was the result of passion and prejudice against **FARNAZ** and misconceived notions of conspiracy and joint and several liability. These are family members' meetings, not incident. When there is a separation, families gather to discuss issues. The evidence of **ASHRAF**'s marginal, passive, observer status, **present as a mother**, is insufficient to justify the unjust, outrageous $200,000 verdict, or any verdict at all against her.[2] If anybody should have won any award, it is the Defendants who were being taken advantage of, and victimized by an opportunistic money-digger old man, (Hassan) and daughter, (Guity), who seek this opportunity to rob a *67 year-old mother* of her property. This 8-year-old lawsuit is a tragic example of lawsuit abuse by Plaintiffs, their attorneys, and the entire Court system. This abusive process should stop at this point, at least. This Court has the authority and discretion to let justice finally prevail, and prevent further irreversible damage to these two Defendants, and other innocent family members not a party in this case.

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[2] Of Course, if the compensatory damage award against Ashraf is reversed, the punitive damage award against Ashraf must also be reversed.

V. THE UNCONSTITUTIONAL, PREMATURE, UNTIMELY, TACTICAL FILING OF THE CONSENT TO THE REMITTITUR BY PLAINTIFFS AND THEIR ATTORNEY SUSAN K. PINTAR.

The Petition for Rehearing was filed timely on December 27, 1996 by Defendants/Appellants to the Appellate Court. On **January 3, 1997**, Plaintiffs/Respondents answered to the Petition, and on that same date, they filed the Consent to the Remittitur, which should have been filed ***after the final determination of the Appeal.*** In other words, the Consent to the Remittitur should **not** have been filed, until at least after the date of **January 6, 1997**, on which day the Appellate Court denied the ***Petition for Rehearing***. The Appellate Court was prejudiced by an untimely premature document being presented to the Court, while a Rehearing Petition was still pending. Ironically, Plaintiffs/Respondents filed the Consent to the Remittitur will full knowledge that this Petition was awaiting a final determination which might have even rendered the Consent to the Remittitur irrelevant or **unnecessary**, if Defendants/Appellants would not have been prejudiced by the **premature filing** thereof, and would have prevailed. Both the answer to the Petition and the Consent to the Remittitur were filed **concurrently** on ***January 3, 1997***. Plaintiffs and their attorneys have continuously practiced frivolously, and have been able to deceive the Court system, throughout the process of this lawsuit. Through causing prejudice at this level of the due process of Law, once again, Plaintiffs and their attorneys hindered justice and the law, and are still running-away with an unjust judgment. Both Defendants respectfully ask that this Court set aside the entire

judgment and grant a New Trial on all issues, as to **FARNAZ** and **ASHRAF**.

VI. THE UNCONSTITUTIONAL PROCEDURAL ERROR OF THE COURT OF APPEAL TO FILE THE CONSENT TO THE REMITTITUR PREMATURELY, PRIOR TO THE FINAL DETERMINATION OF THE PETITION FOR REHEARING, AND FINAL DETERMINATION OF THE APPEAL.

The Consent to the Remittitur was filed prematurely, on *January 3, 1997* prior to the final determination of the ***Petition for Rehearing*** and **this fact alone disallows the actual Remittitur and the Judgment**. The actual wording of the Opinion of *December 12, 1996* states on page 22, that the Consent to the Remittitur: **"shall within 30 days from the date of the Remittitur filed with the clerk."** The filing date of the Remittitur is ***February 13, 1997***. The Remittitur comes down after the Opinion becomes ***final***, which is **February 13, 1997**, which would have been after the **final determination** of the ***Petition for Rehearing***. This was objected to, at length by Marc Smith, Defendants/Appellants' attorney, during the hearing held on April 22, 1997, however the court file was not in the court room because: "the files went back to Santa Monica", as quoted by the Court, (page 10, line 2-3). Therefore, this subject could not have been decided on that date.

Secondly, the Court of Appeal realizing that the filing date of ***January 3, 1997*** is improper & premature, has whited-out the number ***"3"*** of the actual stamp and has placed another stamp on the top right hand of this same page, ***"filed with permission January 9, 1997"*** which is

after the determination of the Petition for Rehearing which was denied on ***January 6, 1997***. Even the January 9, 1997 filing is improper, and premature, because this date is **before** the final determination of the appeal.

In addition, there is a stamp on the left top hand of this page which reads as follows: ***"January 3, 1997"*** which further proves the number ***"3"*** which was **whited-out** by the Clerk of the Appellant Court, Ms. Terri Carter, as initialed T.C., was in fact a ***"3"***. This information was reaffirmed to **FARNAZ** HADJI-ELIAS by the clerk of the Appellate Court, 2nd Floor, on August 25, 1997. This document was received on January 3, 1997 by the Appellate Court, however, it should **not** have been filed until **after the final determination of the Appeal**. Defendants/Appellants were robbed of their rights to a fair and just due process of law, and respectfully ask this Court to remedy that procedural error, by setting aside the entire judgment and granting a New Trial. At this time, it is obvious that the Consent to the Remittitur was not timely, and greatly prejudiced Defendants/Appellants. Therefore, the entire judgment should be set aside, and a New Trial should be granted to **ASHRAF** and **FARNAZ**, on all issues.

VII. PLAINTIFFS' OPPOSITION IS BOTH IRRELEVANT AND LATE, THEREFORE, SHOULD BE DISREGARDED.

Plaintiffs' Opposition to the motion was simply an attempt at obfuscation – an effort to recharacterize and mischaracterize the facts and applicable law – and is replete

with misstatements and distortions. Thus, Plaintiffs confuse and jumble all issues as they relate to law.

Not only is the Plaintiffs' Opposition irrelevant to all issues raised by Defendants, but, by law, the Opposition is clearly ***LATE***, and should not be considered at all. It is obvious that Plaintiffs did not even bother to file an Opposition until Friday September 19, 1997, the Friday before the hearing of the very following Monday, September 22, 1997. In an extra effort to hinder the process of Law, again, Defendants were precluded to file a Reply to Plaintiffs' Opposition, which would be researched enough, because there is simply no time. More importantly, it precluded the Honorable Judge's privilege to have enough time to review the Reply to the Opposition from the Defendants.

Defendants received the Opposition on Friday, September 19, 1997, at 3:30 p.m., to which they have no choice but to file a reply on Monday September 22, 1997, the very day of the hearing. This also shows that Plaintiffs did not have an Opposition or any defense as to the issues and facts set forth in the Defendants' motion.

The Plaintiffs' Opposition to the motion is at best, inconsistent, incoherent, nonsensical, and most obviously IRRELEVANT to the issues and content of the Defendant's motion. Plaintiffs did not raise any defense or even mention the fact the their **Consent to the Remittitur was untimely, premature, against all procedural laws,** which clearly, damaged and prejudiced Defendants detrimentally. In addition, Plaintiffs did not even oppose the fact that they filed the Consent to the Remittitur prematurely in bad faith tactics to hinder justice and obstruct the due

process of law. Plaintiffs, also failed to negate or even remotely mention the fact that they filed their answer to the Petition for a Rehearing on January 3, 1997, **at the very same time**, they filed their untimely Consent to the Remittitur. They failed to state **any** fact or law, relating to their wrongful action, or to the mistake of the Court of Appeal to have filed this document prematurely and without permission on January 3, 1997. There is simply no answer to these obvious facts for them to answer or to oppose.

Even if their Opposition to the Motion were timely, again they would have no defense or answer for the Motion and its issues. But, again by procedural rules of Court, their Opposition is very late. The law states that an Opposition to a Motion should be served at least 5 days prior to the date of the Hearing, which in this case would be on Wednesday, September 17, 1997. However, it was mailed to all parties in this case on September 18, 1997, and thereby received on September 19, 1997. Clearly, the Opposition was served by over 2 days late, while Plaintiffs could have at least *hand service* this document by processor, instead of just mailing it whenever Plaintiffs wanted. Throughout the litigation of this case, Plaintiffs have been late in their Opposition to motions, but this time, it was way over the limits of law, or even courtesy grace period. This, again, is an illustration of disrespect to the law, to the Court, and to Defendants' rights to a fair and just due process of Law.

All parties to this case, the Honorable Judge Meiers, Marc Smith, and the Defendants received the Opposition on Friday, September 19, 1997, as served by mail on September 18, 1997. On this basis alone, the Opposition to

the Motion of the Defendants was late and should have been disregarded, and Defendants' Motion should have been granted in its entirety, based on the law and merit of the issues it possesses, as well as procedural rules.

VIII. DISTORTIONS, MISREPRESENTATIONS THAT MISLEAD THE COURT.

Plaintiffs and their attorneys' continuous habits of distorting the truth and twisting every single fact, during every single phase of this litigation is recorded on file. Throughout this period, they have gotten away with so many frivolous and unlawful accusations, allegations, that they think that no Court or Judge will eventually realize their robbery of the legal system, and penalize them for their actions. Not only do they dare to oppress Defendants, but at the same time, they make everyone believe that it is the Defendants who have no rights and no merits. Their persistence to paint Defendants and misrepresent every simple, daily-life act as a condonable crime of all times, and making a lot of fog to hide the truth and Defendants' unquestionable rights and merits, is against all laws and justice.

For example, on page 7, lines 18, 22, of Plaintiffs' Opposition the main issue of the motion is omitted by their citing of **Rule: 24(a):** ***"A decision of a Court of Appeal becomes final as to that Court 30 days after filing"***, and the portion ***omitted*** is: ***"OF THE REMITTITUR."*** Apparently, Plaintiffs chose to omit this most crucial phrase, changing the whole aspect of the issue.

Again, relating to this topic, Plaintiffs introduced an unrelated date of January 30, 1997, which is not a date for

any deadline in this actual case. On page 8, of Plaintiffs Opposition, they claim that "the Court of Appeal's decision issued on December 12, 1996 became final 30 days of its issuance, which was *January 30, 1997*", which is a **false statement** because the Remittitur was issued on ***February 13, 1997***, and that is when the Court of Appeal's decision became final. Again, twisting the implication of words, Plaintiffs further try to implicate that they acted according to the Court of Appeal's opinion by further adding: *"~However~"there was a modification stated in the Court's opinion which gave plaintiff's herein 30 days to agree to said remission."* There is no modification in the Court's Opinion that is contrary to the law stated in **Rule 24(a)**, and the word *"However"* is nothing but to detract attention to something that is not true and does not exist. Basically, Plaintiffs want to make believe that their filing of the Consent to the Remittitur on *January 3, 1997*, is *somehow* correct, because it is somehow within 30 days before January 30, 1997, which is a **false** insinuation. Plaintiffs did not oppose or deny any of the facts relating to the matter of dates in Defendants' Motion. In fact Plaintiffs did not confront **any** of Defendants' Points and Authorities.

Furthermore, Defendants' Motion and this Petition are based on Law and **not only** on insufficiency of evidence. The 'insufficiency of evidence' issue, discussed by Defendants, is part of the claim that Defendants were barred from their privilege to have a proper, and fair Petition for Rehearing, and therefore their rights have been taken away in that process, which leads to the judgment to be set aside and a new trial to be granted.

IX. THIS COURT HAS FULL JURISDICTION, SPECIALLY THAT JUDGMENT WAS DISALLOWED

Due to all of the above mentioned issues, in addition to constitutional rights, there is no doubt that this Court has full jurisdiction over the decision pending before this Court at this time. The Consent to the Remittitur was filed by Plaintiffs in bad faith, in order to prejudice Defendants, before the Petition for the **Rehearing** was ever decided. The Court of Appeal made the mistake to file the Consent to the Remittitur prematurely on **January 3, 1997**, and **whitening-out the number 3**, and **refiling the same document on January 9, 1997**, which is also a mistake in Procedure, since the Consent to the Remittitur was supposed to be filed 30 days **after** the filing of the Remittitur which is **February 13, 1997**. The Judgment could have been entered if the Consent to the Remittitur was filed timely within 30 days after the filing of the Remittitur, and the fact that it was not, **disallows the judgment in its entirety**. This issue was raised in the hearing of April 22, 1997, in the Superior Court, and it was agreed upon by the Honorable Judge Meiers, that if the Consent to the Remittitur was **not timely, then the judgment is disallowed**. Therefore, the jurisdiction of this Court is to decide on the judgment, and both Defendants/Appellants/Petitioners seek to set aside the judgment and ask for a new trial.

X. SUPERIOR COURT JUDGE PRECLUDED THE HEARING TO TAKE PLACE, ON THE DAY OF THE HEARING.

The Motion to set aside the entire judgment and grant a new trial was set for September 22, 1997, at 9:00 a.m., in the Superior Court of California, by Defendants/Appellants/Petitioners. The notice for the Motion was timely. However, on the day of the hearing, when all parties appeared for the hearing, Honorable Judge Barbara Meiers *did not conduct any hearing, ordered Defendants not to speak, ordered Plaintiffs' attorney to return to Defendants,* the Reply to the Motion being served onto the Plaintiffs on the day of the hearing. Defendants had no choice but to file their Reply on the day of the Hearing, since Plaintiffs' Opposition was only served the Friday prior to the hearing of Monday. Most unjustly, the Honorable Judge **did not even hear the Motion or deny it,** she precluded any argument to take place, despite the fact that rendering a correct judgment is the chore of the Jurisdiction of her Court. Furthermore, Judge Meiers had agreed with Defendants' attorney, Marc Smith, on April 22, 1997 that the judgment is disallowed if the Consent to the Remittitur was filed untimely. As a matter of fact, she was the first to mention this procedural mistake during that same hearing, to which fact Marc Smith objected, and since the files were not available for the Judge to check the date of the Consent to the Remittitur, and Plaintiffs' attorney failed to clear this unknown, it was agreed upon that if the Consent to the Remittitur were untimely that the entire judgment be disallowed. This procedural mistake by the Superior Court is too tremendous to be bypassed. The right to a fair hearing, or even a hearing at all, was

taken away from Defendants, which in itself is a ground to grant Defendants' Motion that the Superior Court Judge failed to recognize, as dictated by due process of law for a Motion to be heard and to be denied. The Judge did not even deny the Motion.

At this time, this Supreme Court has full jurisdiction of this matter, considering the multiple procedural mistakes by the Appellate Court, in addition to the mistake of the Superior Court Judge, **not** *to conduct a hearing* to a Motion that was properly noticed and served.

Furthermore, Honorable Judge Meiers *precluded* defendants to file the Reply to the Opposition, as a result of which Defendants had to file such document "by demand" in the Superior Court's filing room, which does not usually file any Reply, because any Reply is supposed to be filed with the Clerk of that particular courtroom. This information was given to Defendants by the filing room of the Superior Court and by Mrs. Verle Lopp who had to make a special demand to the filing room to file the Reply "**by demand**".

None of the Defendants/Appellants/Petitioners' rights has been preserved by due process of the law. ***Each*** of the points discussed in this Petition mandates setting aside the entire **Judgment entered by mistake**. At this point Defendants' constitutional rights and privileges car still be saved, before the judgment is enacted by the Plaintiffs/Respondents, as another lawsuit has arisen out of the fact that this erroneous judgment is in effect at this time. This damage is life-threatening to the defendants in this case, and other innocent defendants in the second action, who will suffer great livelihood and financial

damage, if this unjust and erroneous judgment is ever enacted. On the other hand, no prejudice is caused to Respondents as they tried to bypass the legal system by "unclean hands", specially, by filing the Consent to the Remittitur **prematurely** in order to prejudice Defendants.

Moreover, Plaintiffs' Opposition should have been disregarded because it was late, past the due date stated in Rules of the Court. Furthermore, it prevented Defendants to have adequate time to research, prepare and reply to the Opposition. As provided by law, they were entitled to such right. In addition, Plaintiffs' Opposition is filled with distortions and misrepresentations of facts, issues, and matters of law.

The process of the Appellate Court was unlawfully interrupted and manipulated by the premature and prejudicial filing of the Consent to the Remittitur, which caused great prejudice and damage to the Defendants. Therefore, this Court has jurisdiction to Set Aside the Entire Judgment and Grant a New Trial.

Further irreparable damage to Defendants/Appellants should be prevented by a fair application of the law. Due process of **law dictates that the entire Judgment is disallowed**, and therefore, the entire judgment should be set aside and a new trial should be granted, as to all issues for both Defendants/Appellants/Petitioners.

XI. COURT OF APPEAL'S DENIAL OF DEFENDANTS' WRIT OF MANDATE IS ERRONEOUS AND UNCONSTITUTIONAL.

Petitioners filed the Writ of Mandate on October 6, 1997. On October 8, 1997, the Writ of Mandate was denied against Petitioners. Again, another prejudicial error of the Court of Appeal is reflected. The Court of Appeal did not even acknowledge the devastating implication this erroneous judgment has on the Petitioners involved. Petitioners' Constitutional rights have been taken away by mistake, prejudice and erroneous acts of the Court of Appeal as well as the Respondents. The many procedural issues precluded Petitioners to be heard on the merits at the level of the ***REHEARING*** to the Appellate Court. Mistake after mistake, prejudice after prejudice, is the summary of this case, along every step of the due process. What is the truth can not be overseen in any aspect of the law and justice.

XII. CONCLUSION

For the foregoing reasons, the Entire Judgment should be set aside and a New Trial should be granted as to the entire case, as follows:

1. The entire compensatory and punitive damages award against **ASHRAF AND FARNAZ** must be reversed and set aside in their entirety; and

2. Any New Trial must be granted as to the entire case as to **FARNAZ** and **ASHRAF**, on all issues.

Respectfully Submitted,

DATED: **OCTOBER 14, 1997**

BY: /s/ Farnaz Hadji-Elias
FARNAZ HADJI-ELIAS

A. H.
ASHRAF HADJI-ELIAS
Defendants, Appellants, and Petitioners.

XIII. DECLARATION OF FARNAZ HADJI-ELIAS

I, FARNAZ HADJI-ELIAS, declare:

1. I am a Defendant and Appellant in the Los Angeles Superior Court case number WEC142752. The facts set below are of my own personal knowledge and if called as witness, I could and would completely testify thereto.

2. This action was appealed by Defendants to the California Appellate Court. The decision was filed on December 12, 1996. Defendants and Appellants, FARNAZ HADJI-ELIAS and ASHRAF HADJI-ELIAS petitioned the Appellate Court for a Rehearing which the Court denied on January 6, 1997 due the detrimental procedural error of the Appellate Court's Clerk's office which had *"Filed"* the Consent to the Remittitur on "Jan 3, 1997", before the Petition for Rehearing was decided on January 6, 1997. Secondly, Plaintiffs and their attorney Susan K. Pintar filed their Answer to the Petition for Rehearing on January 3, 1997 and **intentionally, at the same time,** they filed the Consent to the Remittitur in bad faith, knowing that

this **Petition was pending and not decided**. This caused great prejudice against the Defendants/Appellants of this case, as a result of which the Petition for Rehearing was denied. The Consent to the Remittitur was filed on **January 3, 1997 without permission of the Court**, however, it was filed, and this fact, intervened with the due process of the Appellate Court to decide without any prejudice or manipulation by the Plaintiffs/Respondents and their attorneys. In addition, great prejudice resulted from the detrimental procedural error of the Appellate Court to file the Consent to the Remittitur prematurely, specially before the Rehearing Petition was even decided.

On top of the *"Filed January 3. 1997"* stamp, there is another stamp which reads as follows: ***"Permission to file granted January 9, 1997"***, which was obviously added after the realization by the Court of Appeal that this document should not have been filed on ***January 3, 1997***, because the denial of the Petition for Rehearing was filed on ***January 6, 1997.***

Furthermore, the number "3" in the "Filed" stamp has been whited-out by the initials "T.C.", which as I found out on August 25, 1997, (by the Clerk of the Appellate Court), signifies the initials of Ms. Terry Carter, who had filed this document in error and later tried to **correct this mistake by whitening-out the number "3"**, and **refiling it, again by error, on January 9, 1997**. On the left hand corner of the same document, there is a stamp of the Appellate Court which reads: *"January 3, 1997"*, which further proves that the "Filed" stamp of "January 3, 1997", of which, the number "3" is whited-out, was in fact the number "3". In January 1997, I called the Clerk of the Appellate Court and the Clerk informed me that the

Consent to the Remittitur had been filed, and it should not have been filed, and he did not know why it was filed.

3. On September 22, 1997, Honorable Judge Meiers took away our rights to a ***fair hearing or any hearing at all,*** not letting any party exchange any word. Furthermore, she ordered Plaintiffs' attorney to not accept the Reply to the Motion, (filed that same day, because Plaintiffs' Opposition was filed very late). In addition, Judge Meiers ***refused to file*** Defendants' Reply to the Opposition which is also against due process of law. Defendants were forced to file this document "by demand" in the filing window of the Superior Court by special permission of the manager, Mrs. Verle Lopp. Our constitutional rights have been obstructed and taken away from us in various steps of this process, which, again, caused us great financial and livelihood damage, influencing every aspect of our lives.

4. Our Writ to the Appellate Court was denied by prejudice, since the Court of Appeal did not acknowledge the erroneous and unconstitutional acts of its own Court. As a result, we lost the chance to be heard on the merit, because of these mistakes, at the level of the *PETITION FOR REHEARING*, therefore, our only remedy is to succeed in this Petition. Our only goal is to protect our rights versus the Plaintiffs/Respondents, in an effort to preserve justice in a case that we have rights and these constitutional rights have been taken away from us, on all levels of this litigation. We have no intention to make other cases against any party, but our only purpose is to restore the damage caused by this unjust judgment and

prevent further damage to us by prevailing in this petition. Many mistakes have been made and many rights have been taken away from us. This Petition can correct all the unfair, prejudicial and procedural mistakes and reinstate justice for us.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this is declaration was executed this 14th day of October, 1997 in Los Angeles, California.

/s/ Farnaz Hadji-Elias
FARNAZ HADJI-ELIAS

XIV. DECLARATION OF ASHRAF HADJI-ELIAS

I, ASHRAF HADJI-ELIAS, declare:

1. I am a Defendant and Appellant in the Los Angeles Superior Court case number WEC142752. The facts set below are of my own personal knowledge and if called as witness, I could and would completely testify thereto.

2. This action was appealed by Defendants to the California Appellate Court. The decision was filed on December 12, 1996. Defendants and Appellants, FARNAZ HADJI-ELIAS and ASHRAF HADJI-ELIAS petitioned the Appellate Court for a Rehearing which the Court denied on January 6, 1997, due the procedural error of the Appellate Court Clerk's office which had *"Filed"* the Consent to the Remittitur on "Jan 3, 1997", before the Petition for Rehearing was decided on January 6, 1997. Secondly, Plaintiffs and their attorney, Susan K. Pintar filed their Answer to the Petition for Rehearing on January 3, 1997

and **intentionally, at the same time**, they filed the Consent to the Remittitur in bad faith, knowing that this Petition was pending and not decided. This caused great prejudice against the Defendants/Appellants of this case, as a result of which the Petition for Rehearing was denied. The Consent to the Remittitur was filed on January 3, 1997 **without permission of the Court**, however, it was filed, and this fact, intervened with the **due process** of the Appellate Court to decide without any prejudice or manipulation by the Plaintiffs/Respondents and their attorneys. In addition, great prejudice resulted from the **detrimental procedural error of the Appellate Court** to file the consent prematurely, specially ***before*** the rehearing was even decided.

On top of the "***Filed January 3, 1997***" stamp, there is another stamp which reads as follows: ***"Permission to file granted January 9, 1997"*** which was obviously added after the realization by the Court of Appeal that this document **should not have been filed on *January 3, 1997,*** because the denial of the Petition for Rehearing was filed on *January 6, 1997.*

Furthermore, the number "3" in the "Filed" stamp has been **whited-out by the initials "T.C.", by the Clerk of the Appellate Court**, which signifies the initials of Ms. Terry Carter, who had filed this document in error and later tried to correct this mistake by whitening-out the number "3", and **refiling it again by error, on January 9, 1997.** On the left hand corner of the same document, there is a stamp of the Appellate Court which reads: *"January 3, 1997"*, which further proves that the "Filed" stamp of *"January 3, 1997"*, of which the number *"3"* is whited-out, was in fact the number *"3"*.

3. On September 22, 1997, Honorable Judge Meiers took away our rights to a fair hearing or any hearing at all, ***not letting any party exchange any word.*** Furthermore, she ***ordered*** Plaintiffs' attorney to not accept the Reply to the Motion, (filed that same day, because PLAINTIFFS' OPPOSITION was filed very late). In addition, Judge Meiers ***refused to file Defendants' Reply to the Opposition*** which is also against due process of law. Defendants were forced to file this document "by demand" in the filing window of the Superior Court by special permission of the manager, Mrs. Verle Lopp. Our constitutional rights have been obstructed and taken away from us in various steps of this process, which, again, caused us great financial and livelihood damage, influencing every aspect of our lives.

4. Our Writ to the Appellate Court was denied by prejudice, since the Court of Appeal did not acknowledge its own erroneous and **unconstitutional acts.** As a result, we lost the chance to be heard fairly at the **PETITION FOR REHEARING**, on the basis of merit, because of these mistakes, therefore, our only remedy is to succeed in this petition. Our only goal is to protect our rights versus the Plaintiffs/Respondents, in an effort to preserve justice in a case that we have rights and these constitutional rights have been taken away from us. We have no intention to make other cases against any party, but our only purpose is to restore the damage caused by this unjust judgment and prevent further damage to us by prevailing in this petition. Many mistakes have been made and many rights have been taken away from us, at all levels of this litigation. This Petition can correct all the unfair, prejudicial and procedural mistakes and reinstate justice for us.

5. I am the **67 year old mother** of the main defendant in this case, who is my youngest child and daughter. Since 1981, my life has been turmoiled by losing my youngest daughter, Farnaz, to a man who abused his seniority and his position as a trustworthy man, **to rob her from having a normal youth and promising future.**

Hassan's concern was at all times, to have the best for himself and never even thought about what his actions would cause to a young girl and to her family. Even after leaving Farnaz at 25 in 1989, he decided to make even more profit out of her existence. He did not pity, at least, to really leave her alone, so that, maybe, she could or would try to rescue her life and emerge from this trap and try to create a better, new life for herself. She still had a chance. However, very selfishly and savagely, Hasaan decided to take away even more from Farnaz, by seeking an opportunity to destroy her life, even more, now that he no longer could use her in any other way. He decided to extract money from her and her family by starting this nonsensical lawsuit and by manipulating the events through this litigation, he has succeeded to totally ruin the lives of my entire family to the point of tragedy. At many stages of this process, he should have been stopped by law and justice, but somehow he bypassed all the system to his own personal advantage. He manipulates people in a way, they won't even realize it until it's too late. He started this abuse, just to have a good time at the cost of everyone else. He has this ability to have everyone admire him so that he can exert from them, their devoted service. This is his way of thinking, that everyone was born to be at his service. And throughout, he has succeeded.

It was my ***constitutional right to be a mother,*** and to just be with my daughter at a time when she was deserted so heartlessly and was thrown back into my arms to nurture her back to life. I tried to be present at the family meetings in order to help my daughter cope with what had happened to her, having been deserted by someone in whom she believed. By what law, is this called "conspiracy"?

At this very late stage of my life, in which I have lost a daughter, my name, my health to this man who has made everyday unbearable to live, destroying my entire family, I seek justice from the authority of this Court to stop this unfair process, by Law, as we defendants had a right to a fair Petition for Rehearing which was taken away from us by the mistake of the Appellate Court who filed the Consent of the Remittitur of the Plaintiffs/ Respondents before the Petition for Rehearing was ever decided, and before the final determination of the appeal. We were prejudiced greatly and will suffer both personally and financially as the right to the due process of law was taken away from us by prejudice, and our lives will be even more shattered. In addition, Plaintiffs/Respondents and their attorneys **intentionally** filed this Consent to the Remittitur **prematurely**, in order to prejudice the Petition for Rehearing and to obstruct the just process of law. As a least remedy, I respectfully ask this **Court of Law to set aside the entire judgment** and grant a New Trial on all issues, as to me and my daughter Farnaz.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct and that this is declaration was executed this 14th day of OCTOBER, 1997, in Los Angeles, California.

/s/ A. H.
ASHRAF HADJI-ELIAS

AMENDMENT XIV – CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Materials for the Citizenship and Privileges and Immunities Clauses of Section 1 are set out in this volume. See the following three volumes for materials pertaining to the Due Process and Equal Protection Clauses of that section and Sections 2 to 5.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

California Civil Code
§ 3295. Protection of evidence of financial condition

* * *

(b) Nothing in this section shall prohibit the introduction of prima facie evidence to establish a case for damages pursuant to Section 3294.

* * *

(d) The court shall, on application of any defendant, preclude the admission of evidence of that defendant's profits or financial condition until after the trier of fact returns a verdict for plaintiff awarding actual damages and finds that a defendant is guilty of malice, oppression, or fraud in accordance with Section 3294. Evidence of profit and financial condition shall be admissible only as to the defendant or defendants found to be liable to the plaintiff and to be guilty of malice, oppression, or fraud. Evidence of profit and financial condition shall be presented to the same trier of fact that found for the plaintiff and found one or more defendants guilty of malice, oppression, or fraud.

* * *

California Rules of Court:
Rule 24. Decision of reviewing court

(a) [When decisions become final] All decisions of the reviewing courts shall be filed with the clerk, who shall forthwith transmit a copy of the opinion to the lower court or tribunal and to the parties.

A decision of the Supreme Court becomes final 30 days after filing unless the court orders a shorter time or, prior to the expiration of the 30-day period of any extension, orders 1 or more additional periods not to exceed a total of 60 additional days. An order of the Supreme Court denying a petition for review of a decision of a Court of Appeal becomes final when it is filed.

A decision of a Court of Appeal becomes final as to that court 30 days after filing. An order dismissing an appeal involuntarily is a decision for purposes of the preceding sentence. The decision becomes final as to that court immediately after filing upon the denial of a petition for a writ within its original jurisdiction or a writ of supersedeas, without issuance of an alternative writ or order to show cause, or the denial of an application for bail or to reduce bail pending appeal, or the denial of a transfer to a Court of Appeal in a case within the original jurisdiction of a municipal or justice court, **or an order of dismissal of an appeal pursuant to a written request of the appellant or a stipulation of the parties.** The denial of a petition for a writ of habeas corpus that is filed on the same day as the decision in a related appeal becomes final as to the Court of Appeal at the same time as the related appeal.

When a decision of a reviewing court is final as to that court, it is not thereafter subject to modification or rehearing by that court, except that when the date of finality falls on a holiday or other day the clerk's office is closed, the decision may be modified or rehearing granted or denied until the close of business on the next day the clerk's office is open. If an opinion is modified without change in the judgment, during the time allowed for rehearing, the modification shall not postpone the time that the decision becomes final as provided above; but if the judgment is modified during that time, the period specified herein begins to run anew, as of the date of modification. (Subd (a) as amended effective January 1, 1994; previously amended effective January 1, 1957, January 1, 1959, January 1, 1961, January 2, 1962, July 1, 1963,

November 11, 1966, January 1, 1968, July 1, 1972, July 1, 1973, July 1, 1984, July 1, 1986, July 1, 1989, January 1, 1991, January 1, 1993.)

* * *

(c) **[Filing consent to modification]** If the reviewing court orders that a judgment be reversed and a new trial granted or that, in the alternative, the judgment be affirmed on condition that the party in whose favor judgment has been rendered consent to a remission of a portion thereof, or on condition that the party against whom the judgment has been rendered consent to an addition thereto, then, unless otherwise ordered, the judgment of reversal and granting of a new trial shall become final unless within 30 days after the filing of the decision two copies of a written consent by such party to the remission or addition shall be filed in the reviewing court. One of the copies shall be transmitted with the remittitur to the superior court. (Subd (c) as relettered effective July 1, 1986.)

* * *

California Rules of Court
Rule 25. Remittitur

(a) [Issuance and transmission] A remittitur shall issue after the final determination of (1) Supreme Court review of a decision of a Court of Appeal; (2) any appeal, or; (3) any original proceeding in which an alternative writ to order to show cause has been issued addressed to a lower court, board or tribunal; or (4) any original proceeding

determining on the merits the validity of the decision of a lower court, board or tribunal without issuance of an order to show cause or alternative writ. A remittitur shall not be issued when an original petition is summarily denied.

Unless otherwise ordered, the Clerk of the Supreme Court shall issue the remittitur when a judgment of that court becomes final, and the clerk of a Court of Appeal shall issue the remittitur (1) upon the expiration of the period during which review in the Supreme Court may be determined, including any extension of the period granted in the particular cause or (2) as provided in this subdivision or rule 29.4(c). The remittitur shall be deemed issued on the clerk's entry in the record of the case, and shall be transmitted immediately, with a certified copy of the opinion or order, to the lower court, board or tribunal. On Supreme Court review of a decision of a Court of Appeal the remittitur shall, unless otherwise ordered, be addressed to the Court of Appeal, accompanied by a second certified copy of the remittitur and by two certified copies of the opinion or order; and the Court of Appeal shall issue its remittitur forthwith after an unqualified affirmance or reversal of its judgment by the Supreme Court, or after finality of such further proceedings as are mandated by the Supreme Court.

Whenever the judgment of the reviewing court changes the length of a sentence to state prison or changes the applicable credits, or changes the maximum permissible period of confinement of a person committed to the custody of the Youth Authority, without requiring further hearing in the trial court, the clerk of the reviewing court

shall also transmit a copy of the remittitur and the opinion to the Department of Corrections or to the Youth Authority. (Subd (a) as amended effective May 6, 1985; previously amended effective July 1, 1984.)

* * *

28 U.S.C. § 1251. Original jurisdiction

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;

(2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.